

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:
THE ROMAN CATHOLIC DIOCESE OF
ROCKVILLE CENTRE, NEW YORK,
Debtor.

Chapter 11

Case No. 20-12345 (SCC)

DECLARATION OF KAREN B. DINE, ESQ.

Pursuant to 28 U.S.C. § 1746, I, Karen B. Dine, hereby submit this declaration (the “Declaration”) under penalty of perjury:

1. I am of counsel at the law firm of Pachulski Stang Ziehl & Jones LLP (“PSZJ”) with an office at 780 Third Avenue, 34th Floor, New York, NY 10017. I am duly admitted to practice law in the United States District Courts for the Southern and Eastern Districts of New York.

2. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein. If called as a witness, I would testify as to those facts.

3. The Court has approved PSZJ’s employment as counsel to the Official Committee of Unsecured Creditors (the “Committee”) in The Roman Catholic Diocese of Rockville Centre, New York (the “Diocese” or the “Debtor”) in the above-captioned case (the “Case”). *See* Docket No. 163.

4. I submit this Declaration in support of the *Objection of the Official Committee of Unsecured Creditors* to the *Debtor's Motion to Dismiss*¹ [Docket No. 3071] (the "Objection"), filed concurrently herewith.

5. Attached hereto at **Exhibit A** is a copy of relevant portions of the transcript of the hearing held before the Bankruptcy Court on September 26, 2023.

6. Attached hereto at **Exhibit B** is a copy of relevant portions of the transcript of the hearing held before the Bankruptcy Court on December 19, 2023.

7. Attached hereto at **Exhibit C** is a copy of relevant portions of the transcript of the hearing held before the Bankruptcy Court on November 1, 2023.

8. Attached hereto at **Exhibit D** is a true and correct copy of an email exchange between E. Stephens of Jones Day and J. Stang of PSZJ.

9. Attached hereto at **Exhibit E** is a true and correct copy of an email exchange between Leander James of James, Vernon & Weeks, P.A. and Eric Stephens of Jones Day.

10. Attached hereto as **Exhibit F** is a true and correct copy of a letter dated December 1, 2023 from C. DiPompeo of Jones Day to K. Brown and G. Greenwood of PSZJ.

11. Attached hereto at **Exhibit G** is a copy of the transcript of the November 29, 2023 Proceeding in *Ark457 Doe v. Holy Family, et al*, Index No. 900094/21 at 2:10-3:10.

12. Attached hereto as **Exhibit H** is a true and correct copy of a letter dated December 13, 2023 from G. Greenwood of PSZJ to C. DiPompeo of Jones Day.

13. Attached hereto at **Exhibit I** is a copy of the statement of Bishop Barres regarding the bankruptcy filing from The Dialog, October 1, 2020 (*Bishop John Barres Makes Difficult Decision to have Diocese of Rockville Centre File for Bankruptcy*).

¹ *Debtor's Motion to Dismiss the Case for Entry of an Order Dismissing the Debtor's Chapter 11 Case* [Docket No. 3053] (the "Motion to Dismiss"). Capitalized terms used and not otherwise defined herein have the meaning ascribed thereto in the Objection.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. I executed this Declaration on April 26, 2024 at New York, New York.

/s/Karen B. Dine

Karen B. Dine, Esq.

EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 20-12345-mg

4 - - - - - x

5 In the Matter of:

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7 THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 September 26, 2023

16 3:00 PM

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19

20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

1 HEARING re Motion to Authorize / An Order Granting Leave,
2 Standing, and Authority to Prosecute a Cause of Action on
3 Behalf of the Debtor and its Estate. (Doc ## 2425, 2429,
4 2435, 2456, 2457, 2466 to 2469, 2500, 2501, 2510, 2511,
5 2513, 2515)

6
7 HEARING re Application for FRBP 2004 Examination Motion for
8 Entry of an Order Pursuant to Bankruptcy Rule 2004
9 Authorizing Examination of Witnesses and the Production of
10 Documents. (Doc ## 2388 to 2390, 2400, 2461, 2475, 2485,
11 2513, 2515)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 REED SMITH LLP

4 Special Insurance Counsel to the Diocese

5 Three Logan Square

6 1717 Arch Street, Suite 3100

7 Philadelphia, PA 19103

8

9 BY: TIM LAW

10

11 PARKER HUDSON RAINER DOBBS LLP

12 Attorneys for Interstate Fire Casualty Company

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16 BY: HARRIS WINSBERG

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20 and Certain London Market Insurers

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22 Los Angeles, CA 90017

23

24 BY: RUSSELL ROTEN

25

1 PACHULSKI STANG ZIEHL & JONES
2 Attorneys for the Committee
3 780 Third Avenue, 34th Floor
4 New York, NY 10017
5

6 BY: KAREN DINE
7

8 PORZIO BROMBERG & NEWMAN
9 Attorneys for Arrowood
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12

13 BY: BRETT MOORE
14

15 ALSO PRESENT:

16 TIM BURNS

17 JESSE BAIR

18 CORRINE BALL

19 NATHANIEL ALLARD

20 JOHN BERRINGER

21 KENNEDY RHEA BODNAREK

22 STEPHENIE LANNIGAN BROSS

23 JOHN BUCHEIT

24 DYLAN CASSIDY

25 ANDREW CIRIELLO

1 SHARA CLAIRE CORNELL
2 WAYNE MATTHEW COX
3 JILLIAN DENNEHY
4 STEPHEN DONATO
5 THERESA DRISCOLL
6 AREILLE FELDSHON
7 ROBERT GERBER
8 TRUSHA GOFFE
9 WILLIAM HEUER
10 ADAM HOROWITZ
11 TODD JACOBS
12 AARON JAVIAN
13 ANN KRAMER
14 JUSTIN KRELL
15 BRITTANY MITCHELL MICHAEL
16 GEOFFREY MILLER
17 SIOBHAIN PATRICIA MINAROVICH
18 JAMES MOFFITT
19 IAIN NASATIR
20 CHRIS PERKINDS
21 THOMAS SLOME
22 ADAM SMITH
23 PATRICK STONEKING
24 CATALINA SUGAYAN
25 NORA ANNE VALENZA-FROST

1 CHELSIE WARNER

2 MATTHEW MICHAEL WEISS

3 JACOB WORLOW

4 GREG ZIPES

5 UDAY GORREPATI

6 EMILY LEVER

7 KAREN MORIARTY

8 VINCE SULLIVAN

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P R O C E E D I N G S

THE COURT: Please be seated. All right, we're here in the Roman Catholic Diocese of Rockville Centre, 20-12345. And the first matter on the calendar is the Committee's motion for standing and authority to prosecute a claim on behalf of the Estate. Who's going to argue for the Committee?

MR. BURNS: Good afternoon, Your Honor. Tim Burns, Special Insurance Counsel for the Committee.

THE COURT: Good afternoon, Mr. Burns. f

MR. BURNS: The Committee's motions today, Your Honor, the derivative standing notion and the 2004 motion, are part of a five-part strategy to protect the insurance to measure the likelihood of the in payment by the insurers, and to maximize payment under state law.

So, why now? Why not earlier? Why are we bringing these motions before the Court now? It all has to do with bargaining power, Your Honor. And I want to talk about that a bit, to put the motions into context.

In the early stages of a bankruptcy case, survivors have very little bargaining power vis-à-vis the insurance companies. We do not, survivors do not have, the Committee does not have a direct right of action to pursue the insurance company until there is a judgment or a settlement.

1 The survivors have a means of pushing the insurers
2 to the courthouse steps ordinarily, until there's a
3 settlement or a judgment. Insurers recognize this, Your
4 Honor. They understand that at the early stages of the
5 bankruptcy case, there's no immediate payment application,
6 and they can sit back and wait. They can bargain, as if
7 they have overweening bargaining power in the case. And
8 they can make money on what Justice Brandeis would call
9 other people's money, while they wait.

10 And we've learned from other cases that the more
11 Committee focuses on insurance, and trying to obtain the
12 insurance for recoveries, we can certainly expect the
13 Diocese to try to ratchet down its contribution, based on
14 our focus on insurance recoveries; even though there's not a
15 hope that the combination of the two Diocese in parish
16 contribution, and insurance money will make the survivors
17 whole. It's only once the Committee reaches a resolution on
18 the Diocese' in parish contribution that we start having
19 what starts to approach equal bargaining power with the
20 insurer's. We're closer to the courthouse steps with
21 respect to the insurers.

22 THE COURT: Is the Committee close a resolution
23 now?

24 MR. BURNS: My next point, Your Honor, which is,
25 we don't have a deal here. We may not reach a deal on

1 Diocesan in parish contribution. But if it's going to
2 happen, it needs to happen soon. And so, these motions that
3 we're bringing, this five-part strategy --

4 THE COURT: What's the other four parts?

5 MR. BURNS: It's my next point, Your Honor,
6 because I do want to give context about where these motions
7 fit. So, there are five parts altogether. The derivative
8 standing motion is to protect the insurance from what
9 happened in Camden and Rochester. In addition, you've
10 probably seen, Your Honor --

11 THE COURT: I didn't read the -- I see Camden
12 seems to have an amended plan that's going to deal with it.
13 I haven't read what it is, but I have seen the headline.

14 MR. BURNS: I saw it this morning as well, and
15 looked briefly at the plan in the (indiscernible) that
16 wasn't attached in the Law360 story, but I was able to find
17 it. And so ... I will ... more talking about Camden and
18 Rochester slightly later in the presentation. But to answer
19 the Court's question about the other part of the insurance
20 strategy, so, their Motions for Relief from the Stay
21 pending, the Court's probably seen, and the Committee has
22 joined into this, to enable certain State Court counsel to
23 make insurance demands; something that's done day in, day
24 out, in the tort system in New York. So, that's the second
25 part.

1 The third part is, we've asked the Diocese. They
2 haven't responded yet. In fairness to them, we just asked
3 them, sent them a letter last week, so we're expecting a
4 response. But we've also asked that two motions for partial
5 summary judgment be made on an issue in two of the adversary
6 proceedings, which we believe will give the parties guidance
7 and help maximize the insurance available.

8 There's, the fourth part, of course, is the 2004
9 motion, where we're attempting to measure the likelihood
10 that Arrowood can pay, is going to pay, have any intention
11 to pay.

12 And the fifth part of that discovery shows us what
13 we believe to be the case we will also be ... that Arrowood is
14 effectively denying coverage for these claims. It may say
15 it's reserving its rights. That leads to one basket or
16 rights on behalf of policyholders and claimants. But if
17 they're effectively denying, that leads to a different
18 basket of rights on behalf of policyholders and claimants,
19 in terms of when and how they can settle. So that will be
20 the fifth part of this.

21 Judge, I wanted to start with the relative
22 bargaining power of the Committee, based in the time of the
23 case, for this reason: A few weeks ago, I was flying to
24 Vienna and I reread David Dorsen's biography of Judge
25 Friendly. And David Dorsen makes the point that you may

1 have witnessed, Judge, that one of the things that made
2 Judge Friendly such a great judge, in civil cases, in
3 particularly securities cases, was his sense, after 30 years
4 of practice, and as General Counsel of Pan Am; his sense of
5 relative bargaining powers of parties. And, of course,
6 Dorsen's overall theme in the point was Judge Friendly tried
7 to level the playing field.

8 THE COURT: But he always followed the law.

9 MR. BURNS: Absolutely, Your Honor, and we would
10 want nothing else here, although it is -- another of David
11 Dorsen's stories in the book, you may remember, involved us;
12 the clerk probably after you, or close to ten years after
13 you, the current Chief Justice. Judge Friendly was deciding
14 the private right of action case under the securities law.
15 And then law clerk, John Roberts said Supreme Court doesn't
16 favor private right of actions at the moment. It hasn't
17 happened and (indiscernible) Judge Friendly's response was,
18 "Yes, but they haven't told me that I can't create a private
19 right of action."

20 An important thing to remember in these cases, in
21 case you are wearing the Chancellor's robe, Your Honor, with
22 respect to some of these issues, are we going to be able to
23 point you to case law where they've enjoined us this before,
24 or they've done such and such before? No. But we think
25 we're on a sound legal basis here.

1 That really brings me again, I'm sorry for the
2 large windup, but I did want to get out the points about
3 earning power. That does bring me to the derivative
4 standing motion.

5 And here, Your Honor, we're simply trying to avoid
6 the harm caused by the insurers in the Diocese --

7 THE COURT: The Diocese has ever incentive to
8 maximize the insurance coverage and he insurer's
9 contribution. This is not a case where you could stand
10 there and argue that divided loyalty would counsel granting
11 the Committee standing to do this, or that the Debtor has a
12 conflict of pursuing his claims, which it filed immediately
13 upon filing the chapter 11 case.

14 MR. BURNS: Can I push back just a little bit --

15 THE COURT: Sure.

16 MR. BURNS: -- on the (indiscernible), and it goes
17 to bargaining power. Your Honor, for sometimes, and I want
18 to be careful here, not to reveal any mediation
19 communication. I don't think it will come as a surprise to
20 the Court, that alternate Diocesan in parish contribution
21 will likely be made based upon what they can pay. And we
22 have, obviously, have a disagreement about what they can
23 pay. And, in all likelihood, even though it wasn't our
24 first choice, what's going to happen at the end of this, the
25 likelihood is there will be an insurance assignment, where a

1 trust gets to pursue --

2 THE COURT: It's happened in a lot of the Diocese
3 cases.

4 MR. BURNS: Yes, Your Honor, but it does bring up
5 the incentive point. The Diocese actually has an incentive
6 to reduce what it pays, but it doesn't say the insurance is
7 reducing what it pays, because its payment is based on its
8 ability to pay, in a situation where you have massive
9 uninsured exposure and too little insurance. So, I just
10 wanted to be clear on that incentive point, because I do
11 think it's important. Their focus is on, as I understand
12 it, is what they can pay, not what the insurers are going to
13 pay. That's going to be (indiscernible) at the end of the
14 day. We didn't want that as a problem, but the likelihood
15 is, if there's a resolution with the Diocese --

16 THE COURT: The Diocese, through a combination of
17 its own (indiscernible) contributions and insurance, hopes
18 that survivors recover the maximum amount they can for the
19 harm that they achieved, they received?

20 MR. BURNS: I'm probably not the right one, Your
21 Honor, to look into their heart, because I -- you know, we
22 battled these cases with Diocese across the country. So, I
23 carry with me a certain view about things.

24 So, second point I want to make, Your Honor, on
25 the derivative standing motion; the first one was we're just

1 trying to avoid the Camden, Rochester harm. The second
2 point is this: We did everything possible, I think, Your
3 Honor, not to be here today. We want to avoid the harm of
4 Camden and Rochester. But we wrote to the insurers. We
5 wrote to the Diocese multiple times, saying, just give us
6 some assurance that you're not going to try to do the type
7 of harm that was done in Camden and Rochester, that you're
8 not going to enter an agreement without the Committee's
9 consent, that causes a bunch of problems later.

10 I didn't want to be standing up here in front of
11 you on this. I wanted to have assurance that we weren't
12 going to see the type of harm we see in Rochester, in
13 Camden.

14 Third point: We're not asking the Diocese and the
15 insurers not to talk to one another. We applaud their
16 efforts. It's a complete red herring that we're asking them
17 not to negotiate. Policyholders and the insurance
18 negotiate. For the 30 years before I represented, starting
19 representing survivors in our law firm. I represented large
20 corporations in disputes with insurance companies. Of
21 course, policyholders talk to their insurers all the time.
22 I applaud it. I'm not going to say anything about it.

23 Actually, I'm going to stop there. I'm going to
24 applaud it.

25 Next point: We have disclosed a mediation

1 communication. We ended up hearing about these
2 communications of the Motion to Dismiss hearing, and that
3 alerted us to it. We were concerned because of what
4 happened in Rochester and Camden, but we don't need
5 mediation communications to make our case. We have the same
6 insurers as in Rochester and Camden, and they've done the
7 same thing within the past two years. And we have assurance
8 letters where we asked them not to do it, and we got no
9 assurance.

10 The harm in Camden and Rochester, of course, was
11 when those earlier insured Diocesan settlements fell apart
12 as they were bound to fall apart, because they didn't have
13 Committee consent. It led the insurers to contend that they
14 now had huge administrative claims; the difference between
15 what they could have settled for with the Diocese under
16 those settlements, and what they might actually pay.

17 The Committee recognizes it doesn't have perfect
18 tools to stop this conduct. But it was simply not
19 appropriate for the Committee to remain silent, knowing what
20 kind of harm happened in those other cases. So, we
21 fashioned the strongest claim that we could fashion, not
22 having direct coverage right of action.

23 And so that brings me to the derivative standing
24 requirements, which I understand under the case law are
25 four. We have to request the Diocese do it, and we have to

1 have a hearing before this Court. Then we also have to have
2 a colorable claim. And the final of the four points is the
3 Diocese has to justifiably refuse that claim; so, we did
4 request the Diocese, that's in our papers, we're here before
5 the Court.

6 That brings us to the colorable claim. We believe
7 that we've stated a colorable claim under the New York
8 General Business Law. It's evaluated, as I understand the
9 case law and derivative standing. It's essentially
10 evaluated like a 12(a)(6) motion for facial deficiency of
11 the claim. And we think we've pled all of the elements of
12 the claim. We've pled something materially misleading.
13 Insurers are in the business of settling cases when they
14 purport to settle, when they know that the settlement can be
15 approved without Committee consent. We believe that's
16 misleading. We believe it will cause the harm in, that
17 we've witnessed in Camden and Rochester.

18 And finally, we do believe it is consumer
19 oriented, as that term is used, under New York law, in two
20 ways. It does impact a lot of consumers, and particularly
21 survivors around the state, who are survivors of Diocese
22 that had these insurers as part of their program. And
23 that's many diocese.

24 THE COURT: Isn't your, with respect to whether
25 you've asserted a colorable claim, I mean, the issue that I

1 have is, essentially, whether your claim is unripe. It
2 depends on future events that have not yet occurred, and may
3 or may not occur.

4 MR. BURNS: Every ... I think the Second Circuit
5 said this -- I'm going to get it wrong, because I don't have
6 Judge Friendly's memory, much more normal mental ability --

7 THE COURT: I appreciate all your references to
8 Judge Friendly, but let's leave it out of this argument.
9 Let's just deal with the facts and the law.

10 MR. BURNS: Sure. Every irreparable injury, Your
11 Honor, becomes irreparable at the time --

12 THE COURT: May or may not, you know. It's
13 uncertain. It's unknown.

14 MR. BURNS: If it becomes irreparable there's
15 nothing we can do to fix it, and all they have to do is
16 strike a deal.

17 THE COURT: Well, they have to strike a deal, they
18 have to get me to approve it.

19 MR. BURNS: So, the challenge in this, Your Honor,
20 if they had to get your approval before they struck a deal,
21 to cause the harm --

22 THE COURT: They don't have to do it before, but
23 they -- you know, if they're going to strike a deal while
24 they're a chapter 11 debtor, which is a big issue, they're
25 going to have to get my approval.

1 MR. BURNS: My point is this, Your Honor: In
2 Rochester and in Camden, neither of those deals were
3 approved by the Court. But all of the harms nevertheless
4 materialized in the sense that now, in Rochester, the
5 insurers can contend that they have a huge administrative
6 claim. Now, in Camden, they're contending that they have a
7 huge administrative claim that they're pursuing. Those
8 deals weren't approved. And in fact, the judge in Camden
9 just disapproved the deal, earlier insurance settlement in
10 Camden, but left the administrative claim in place. He was
11 skeptical of the administrative claim, but he left it in
12 place as being capable of being pursued.

13 It's -- I would love a situation --

14 THE COURT: What deceptive acts have you alleged?

15 MR. BURNS: I think it's fundamental deceptive
16 act, Your Honor, in the insurance business, which involves
17 the resolution of claims to say I -- we are settling this
18 case with the Diocese, knowing that without overwhelming
19 committee support, that settlement is going nowhere. It's
20 what we called in our papers and exploding nullity. It
21 doesn't -- it hasn't been approved. It doesn't have force
22 in effect, but it nevertheless gives the insurers an
23 argument that the have a huge administrative claim if the
24 Diocese doesn't follow through on it.

25 I wish that were the case. It doesn't make any

1 sense to me that that's the case before approval. We may
2 have to fight in various cases that that's the case. But it
3 can't be that they get a whole new set of arguments based on
4 a settlement that's going nowhere without us saying
5 something about it, because it harms the state, it harms the
6 Committee's position as well. And once they ink it, the
7 harm's done.

8 THE COURT: Anything else?

9 MR. BURNS: I'm concluding at this time. Thank
10 you, Your Honor.

11 THE COURT: All right. Opposition. Who's going
12 to argue first?

13 MR. LAW: Good afternoon, Your Honor, Tim Law from
14 Reed Smith, special insurance counsel to the Diocese. I'll
15 speak briefly.

16 Our main point is that the Committee has not met
17 its burden to show that it should be granted derivative
18 standing to pursue the claim it seeks to pursue. The
19 Diocese has not unjustifiably failed to pursue a claim that
20 is likely to benefit the estate. The relief requested by
21 the Committee in its complaint is limited to injunctive
22 relief. It seeks to enjoin the insurers from entering any
23 settlement, or attempting to enter into any settlement with
24 the Diocese, without the Committee's consent.

25 THE COURT: Does this -- if the Diocese does reach

1 a settlement, does it require this Court's approval?

2 MR. LAW: Excuse me, Your Honor?

3 THE COURT: If the Diocese reaches a settlement
4 with the insurers, does it require this Court's approval?

5 MR. LAW: Absolutely. And then the Committee can
6 appear and object to the settlement in due course. And in
7 fact, in practice, the only way we would reach a settlement
8 without the Committee's consent, is if we have a strong
9 disagreement with the Committee. We're talking with the
10 Committee, we're talking with LMI. We're talking with
11 Allianz, all as it should be. We should be speaking with
12 everyone.

13 The proof in their motion that we're doing
14 something wrong, or that the insurer is doing something
15 wrong, I think it was maybe footnote 2, where they quote
16 time records about us speaking with the mediators and
17 speaking with Allianz and speaking with LMI. That's all
18 fine. We haven't reached a deal with LMI. We haven't
19 reached a deal with Allianz. The Committee hasn't reached a
20 deal with Allianz. They haven't reached a deal with LMI.
21 We're talking, as it should be.

22 And hopefully, we'll all get on the same page and
23 all agree on an appropriate contribution from the insurance
24 companies. And if we do, we'll come to you with a
25 settlement that everyone loves, perhaps --

1 THE COURT: I don't think I've ever had a
2 settlement before me that everyone loves.

3 MR. LAW: That's a rosy picture, Your Honor. So,
4 it's possible that the Committee and the Diocese could
5 disagree. And we think maybe a contribution from LMI, that
6 LMI is willing to make, would be beneficial to the
7 creditors. In that instance, we would talk to the Committee
8 and explain why we think that's true. But the Committee
9 does not have veto rights over an insurance settlement. It
10 can present its arguments to Your Honor if we fail to reach
11 agreement amongst ourselves.

12 But that's not the reason to provide derivative
13 standing to use as datasets for the Committee to go off and
14 sue for deceptive practices in this matter.

15 We should be focused on mediation. We should be
16 focused on trying to reach settlements. And that's what the
17 Diocese wants to do.

18 THE COURT: How many mediation sessions are
19 scheduled between now and the end of October?

20 MR. LAW: A lot. Does anyone know the answer to
21 the Judge's question?

22 MS. BALL: Corrine Ball, Your Honor, Jones Day.
23 We are due to mediate all day tomorrow and all day Thursday.
24 And additional dates have been made available in October.

25 THE COURT: Thank you.

1 MR. LAW: Thank you. Unless Your Honor has
2 questions, that's really all I had to say.

3 THE COURT: Thank you very much, Mr. Law.

4 MR. LAW: Thank you, Your Honor.

5 THE COURT: Who else is going to argue?

6 MR. WINSBERG: Good afternoon, Your Honor. Harris
7 Winsberg on behalf of Interstate. I'll try to be brief, Your
8 Honor.

9 I would start with the prayer for relief in the
10 complaint. The prayer for relief is it seeks to enjoin the
11 insurers from entering into any settlement, or attempting to
12 enter into any settlement with the Diocese, without
13 Committee consent.

14 In the reply brief, the Committee appears to kind
15 of backtrack from that comment and says we're just seeking
16 to bar a deal without Committee consent.

17 THE COURT: You agree, I take it, that any
18 settlement will require approval of this Court.

19 MR. WINSBERG: Of course, Your Honor. And we'll
20 get to having sat in the Camden courtroom for 14 days. I
21 certainly disagree with counsel's comments on Camden. And
22 the Camden insurance settlement, before I go on, there was a
23 disclosure statement. Judge Poslusny approved the
24 disclosure statement with that insurance settlement. So,
25 the notion that those deals are just dead on arrival, that's

1 just not accurate.

2 Going back to the motion today, Your Honor, I want
3 to focus on whether they're seeking to bar the Diocese from
4 entering into a settlement with an insurer without their
5 consent, or broader like the complaint, seeking to -- I
6 think the language they use, attempting to enter into any
7 settlement -- it's effectively a consent point over a
8 settlement, which chills the mediation process. And that's
9 a process that should be run by the mediators.

10 The proposed consent right, and I believe Your
11 Honor's picked up on that, has no support in the Bankruptcy
12 Code and rules, which plainly allow the Debtor to enter into
13 a settlement subject to your, the Court's approval. And the
14 Committee doesn't cite any authority that would prohibit the
15 Diocese from negotiating with the insurers, or that
16 insurer's entry into an insurance settlement without
17 Committee consent, is somehow deceptive or misleading.
18 Insurers and insureds are encouraged to negotiate with each
19 other and reach resolutions.

20 So, there are three main reasons we set forth in
21 our --

22 THE COURT: What's also fundamentally true is that
23 it will be extremely difficult to confirm a plan in this
24 case that does not have the support of the Committee and its
25 constituencies; particularly, if a plan that's proposed

1 includes releases of the parishes and other debtor-related
2 parties.

3 So, whether there's an express consent right or
4 not, without the support of the Committee, it would be
5 extremely difficult for the Diocese to confirm a plan that
6 includes (indiscernible) that I understand why they're
7 seeking. So, whether you've -- I don't equate that to a
8 veto right, but I also don't equate it that you, the
9 insurers can do what it wished to do in negotiating without
10 regard to what the position of the Committee is. I'm not
11 saying the Committee has to be present at every step in the
12 process or all mediation sessions, but it's just unrealistic
13 if the insurers think that the Committee can be neutered
14 with respect to any proposed settlement with the insurers.

15 MR. WINSBERG: And that's absolutely not the case,
16 Your Honor. We have engaged with the Committee in this
17 process, without getting into mediation discussions. But
18 you heard counsel for the Committee say that's not their
19 preferred choice. They want to get a negotiation with the
20 Diocese and the parishes, and then focus on insurance
21 (indiscernible).

22 THE COURT: I didn't hear that. No one said that
23 today, that I'm sure of. Maybe you were in a different
24 hearing than I was.

25 MR. WINSBERG: Well, Your Honor, what I took away

1 is that the insurance was -- we have tried to negotiate with
2 the Committee. It's not where their focus is right now,
3 Your Honor. But we absolutely agree, the Committee are
4 willing to bargain with anybody. We're trying to be part of
5 the solution, not part of the problem, Your Honor.

6 So, going back to, Your Honor, the three main
7 reasons why this motion should be denied, it essentially
8 seeks a veto right, which we believe is a collateral attack
9 on the mediation order and process. That process has been
10 put in place. The parties have followed it and bargained in
11 good faith. And we will continue to bargain in good faith
12 with the Diocese and the Committee, with both.

13 THE COURT: But the Committee, on other issues in
14 this case, before I was presiding over the case, the
15 Committee was giving derivative standing with respect to
16 other issues in the case. So, the fact that they're seeking
17 derivative standing with respect to the insurance, doesn't
18 particularly surprise me. That doesn't say which way it
19 will come out. But you know, with the Diocese' agreement,
20 essentially, the Committee was given derivative standing on
21 some very important issues.

22 MR. WINSBERG: My point on this argument, Your
23 Honor, is that negotiating at arm's length and in good faith
24 with the Diocese, and complying with -- who has
25 sophisticated counsel -- and complying with the mediation

1 process, which is overseen by experienced mediators, cannot
2 possibly give rise to some sort of deceptive practice --

3 THE COURT: I'm not getting involved in the
4 mediation. There are two, there are co-mediators. I'm glad
5 to hear there are dates scheduled. I am not -- it's
6 completely up to the mediators, how they want to order those
7 proceedings, who they want to talk to and when they want to
8 talk to. That's for them to decide; certainly not for me to
9 interject myself in that process.

10 MR. WINSBERG: Your Honor, and so, in reply, the
11 Committee said that the mediation arguments were straw
12 person. But the consent right and having someone being
13 excluded from even seeking to have discussions with the
14 settlement, with the Diocese, certainly, in our view, is
15 inappropriate and inconsistent with the mediation process.

16 And to the second point, the Committee said
17 they're not seeking discussions in the mediation, they're
18 not seeking mediation communications. But how could the
19 Committee prove, or the insurers disprove, a
20 misrepresentation or some sort of deceptive conduct that
21 happened in the mediation, without getting into,
22 effectively, those communications? There would be no way
23 around it.

24 So, we do believe the motion should be denied
25 because it is a collateral attack on the mediation order and

1 the mediation process in place.

2 THE COURT: Thank you.

3 MR. WINSBERG: The second point, Your Honor, is
4 that the claims -- we believe Your Honor picked up on this --
5 -- are not right for adjudication. There may result in
6 multiple hypotheticals that may or may not never occur. And
7 just to give a couple in the chain, Your Honor, the Diocese
8 would have to enter into a settlement with the insurers.
9 The Diocese would have to, essentially, not do its homework
10 or exercise its fiduciary obligation. Your Honor, pointed
11 out, there's no conflict of interest here that you would
12 typically sometimes see when derivative standing is sought.
13 And the Diocese would try to sign an agreement that's not in
14 the best interests of the estate.

15 The Committee, they would assume the Committee
16 would not accept this settlement. And the Committee assumes
17 that this Court would not, could not and would not approve
18 this settlement. And the Diocese would later repudiate the
19 settlement in favor of another deal --

20 THE COURT: Well, there's no settlements are
21 repudiated --

22 MR. WINSBERG: Right.

23 THE COURT: -- until, unless the provider prove
24 it.

25 MR. WINSBERG: Your Honor, so my point being, is

1 there's a long line of causal --

2 THE COURT: If the insurers think they're going to
3 get an administrative claim, because you've reached a
4 settlement that isn't approved by the Court, forget it.

5 MR. WINSBERG: The administrative claims, just
6 like Judge Poslusny has in Camden, and Judge --

7 THE COURT: I don't care what --

8 MR. WINSBERG: But those are for those courts to
9 decide.

10 THE COURT: I'm just telling you, if this case
11 survives, and there's a settlement that comes on for
12 approval, and it's not approved, you're not getting into
13 approved. No one should have the expectation, no insurer
14 should have an expectation, because you've negotiated an
15 agreement with the Diocese, that is later rejected by this
16 Court, that you're sometime, somehow, going to have an
17 administrative claim. Get it clear, it's not going to
18 happen.

19 MR. WINSBERG: I understand, Your Honor. My point
20 on what was said about Camden and Rochester, it wasn't the
21 settlement agreement the Diocese entering into a settlement
22 agreement that caused an admin claim; it was the Diocese'
23 later conduct in repudiating the settlement agreements that
24 caused --

25 THE COURT: There isn't going to be a repudiation

1 of an agreement that isn't approved by the Court. You
2 understand that clearly?

3 MR. WINSBERG: I understand, Your Honor.

4 (indiscernible) on why that should be denied, Your Honor, is
5 that the claims -- they don't state a claim under a 349,
6 which is the consumer protection statute. We've covered the
7 admin claim. That's what they had focused on. Your Honor's
8 made its position clear on the admin claim --

9 THE COURT: I made it clear to all the insurers.

10 MR. WINSBERG: You made it clear to all the
11 insurers, Your Honor. What I would say here, Your Honor, is
12 that harm is a business harm. And the Courts are pretty
13 clear that's the kind of harm that's not consumer protection
14 oriented; it's the harm to the bankruptcy estate, so to
15 speak. And Your Honor has made it clear to all the insurers
16 there would be no admin claim for repudiation.

17 So, with that, Your Honor, I'm happy to answer any
18 questions Your Honor has.

19 THE COURT: Thank you very much. Anybody else
20 want to be heard? Come on up.

21 MR. ROTEN: Good afternoon, Your Honor. I'm
22 Russell Roten. I'm with Duane Morris. I represent certain
23 underwriters at Lloyd's London and certain London Market
24 Insurers. We refer to ourselves as the London Market
25 Insurers, or LMI.

1 We endorse and echo the arguments and comments of
2 the Debtor and Interstate, that Your Honor just heard. I
3 have a few specific points that I'd like to make. And let
4 me start out by saying, Your Honor, we certainly understand
5 the administrative claim issue. I'm going to touch on that,
6 but from a different perspective. But first, let me make
7 just a couple of succinct points.

8 First of all, as Mr. Winsberg said, Section 349 is
9 a consumer protection statute that's not a private right of
10 action type statute. And we have researched the case law in
11 New York, Your Honor, and there's no case where a Court has
12 ever provided a claimant or a committee standing to pursue a
13 claim under Section 349; it's never happened.

14 The second basis for the Committee's derivative
15 action, Your Honor, is Section 2601 of the New York
16 Insurance Law. And as we pointed out in our brief, there is
17 no private right of action under that statute. I can give
18 you the cases again, but they're in our brief. And it,
19 specifically, we've cited a case that says the New York
20 State Superintendent of Insurance has this exclusive
21 jurisdiction to pursue any claim under that statute. So,
22 the Committee has no right to go forward on either of the
23 statutes they're going forward on. That's my first point.

24 The second point I want to make, Your Honor, I had
25 trouble understanding when I read the Committee's brief. It

1 literally took me repeated readings, until I finally sort of
2 got a grasp on what they were saying the deceit was, the
3 dishonesty. And then I heard it repeated again today. And
4 basically, what they're saying, what the Committee is
5 saying, is that there's no chance of any settlement with the
6 Debtor -- excuse me, there's no chance of an insurer's
7 settlement with the Debtor to be approved unless the
8 Committee endorses it. And for us to attempt a settlement
9 in the face of the reality, is deceptive. And I just find
10 that in comprehensible.

11 THE COURT: What is not incomprehensible --

12 MR. ROTEN: Sir?

13 THE COURT: What is not incomprehensible is that a
14 plan, any plan that's proposed, that includes releases, non-
15 Debtor releases, will be confirmed over the face of the
16 opposition of the Committee and its constituencies. Yes,
17 there's vote requirements. I don't have a plan in front of
18 me that's going out for remote, but the chances of any plan
19 being confirmed over the strenuous opposition of the
20 Committee, is extremely remote. The insurers better
21 understand that.

22 MR. ROTEN: Oh, Your Honor, we understand that. I
23 wasn't driving at that point. What I was trying to do was
24 describe what my understanding was of what the Committee is
25 saying is deceptive. And what's the deception is they're

1 trying to settle with the Committee -- excuse me, with the
2 Debtor.

3 Your Honor, we can settle with the Debtor without
4 the Committee's consent, and bring it in front of Your
5 Honor, pursuant to Rule 9019.

6 THE COURT: You can do that.

7 MR. ROTEN: We can do it. We can have a hearing.
8 We can have evidence. And then Your Honor can decide
9 whether, over the Committee's objection, that's a fair
10 settlement. That's our option.

11 THE COURT: And whether I would consider that,
12 absent a plan that's all before the Court, is also a big
13 question.

14 MR. ROTEN: Absolutely.

15 THE COURT: It's the issue of timing. And so, if
16 a plan is proposed, and a disclosure statement comes on for
17 a hearing, and if it then, you know, submitted for votes,
18 we'll deal with it. But don't assume that you would have
19 any settlement with the Debtor approved by the Court, absent
20 a plan.

21 MR. ROTEN: Your Honor, that's not the direction
22 I'm going in. I certainly understand what Your Honor --

23 THE COURT: You seem to be. You seem to think
24 you're going to negotiate a settlement with the Debtor, have
25 it come here absent consideration of plan, as to which is

1 the central component. I have complete control over the
2 timing of any 9019 motion.

3 MR. ROTEN: Absolutely, Your Honor. I understand
4 all of those points. The point I'm trying to make is a
5 different point. I'm just trying to say there's no
6 deception in that. There's nothing, there's no
7 misrepresentation. There's nothing that all the parties
8 wouldn't know about. The Debtor is represented by two
9 outstanding law firms in bankruptcy and in insurance, and
10 they certainly know what's going on here.

11 THE COURT: Any other points you want to make?

12 MR. ROTEN: Yes, Your Honor, a couple. The
13 administrative claim argument that the Committee raised, is
14 a canard. They argue that the administrative claim that we
15 have the right to object to plans, to propose our own plan
16 based on the existence of an administrative claim, and
17 that's not so. An administrative claim has nothing to do
18 with --

19 THE COURT: Let's pass onto your next argument. I
20 don't want to hear anymore about administrative claims.

21 MR. ROTEN: Okay. So, my final argument, Your
22 Honor, has to do with the two cases that the Committee has
23 talked about, Camden and Rochester. I was lead bankruptcy
24 counsel for London in both of those cases, and I was
25 physically present when all these things happened. So, what

1 you're getting from the Committee -- and the Committee was
2 in Rochester -- what you're getting from the Committee is a
3 very distorted representation of what actually happened in
4 those cases.

5 What happened in those cases was the insurer
6 settled. We settled with the Debtor in Rochester because
7 they couldn't make any progress with the Committee, and we
8 settled with the Debtor in Camden for the same reason.
9 Those were good faith settlements. Everything was above
10 board, everything was in writing.

11 But in both of those cases, the Debtor, after we
12 had a settlement agreement, and I think -- I can't remember
13 whether the 9092 motion was actually filed in Rochester; I
14 think it was -- but it was filed in Camden, and was pending.
15 So, we thought we had a deal because the, in those cases,
16 the -- it was impossible to reach agreement, a universal --

17 THE COURT: I'm just curious, of any of the ones
18 where there were settlements before confirmation, if any of
19 the settlement agreements included a fiduciary out for the
20 Diocese?

21 MR. ROTEN: Not in the two, not in those two, Your
22 Honor. There was such an agreement, I think, in boy scouts.
23 And this fiduciary out issue is a very interesting issue.
24 In fact, when the, in Camden, when the Diocese rejected the
25 deal, we started looking for precedent as to whether or not

1 this can be done. And it's extremely rare.

2 THE COURT: The settlement's been approved by the
3 --

4 MR. ROTEN: No. No, Your Honor. And we certainly
5 understand that. But the point I'm trying to make here,
6 Your Honor, about both of these cases, is it wasn't the
7 insurers who were being deceptive; we thought we had a deal.
8 Both of those deals were done through mediation. Everything
9 was out there and aboveboard. We thought it was over
10 because the Committees were preventing a communal deal,
11 wouldn't have it. So, we didn't have a choice. So, we made
12 deals in both of those cases.

13 So, here's what happened. The Debtors in both of
14 those cases took those bills to the Committee and said, hey,
15 we got to deal with the insurers. And they used those deals
16 as leverage to get the Committee to get reasonable with the
17 Debtors. The Debtors are the ones who tricked us, Your
18 Honor. We didn't trick anybody.

19 THE COURT: Let's not talk (indiscernible), let's
20 -- what other points do you have?

21 MR. ROTEN: That's all I have, Your Honor.

22 THE COURT: Okay, thank you very much. Anybody
23 else want to be heard? The Court is going to take this
24 under submission. Ms. Ball?

25 MS. BALL: Thank you, Your Honor. I really came

1 today to provide Your Honor --

2 THE COURT: Always nice to see you.

3 MS. BALL: It's always nice to see you as well,
4 Judge, even if we get a little soggy on our way in.

5 THE COURT: Is it raining again?

6 MS. BALL: Oh, yes, sir. Yes, sir. I was here to
7 answer your questions and kind of review, at least briefly,
8 with you, where we are, because we don't get the opportunity
9 --

10 THE COURT: That would be nice to know.

11 MS. BALL: -- to do that for you very often.

12 THE COURT: I wasn't even going to ask today, but
13 I'm very mindful of the calendar.

14 MS. BALL: As are we all. And I agree with your
15 remark about settlements. We think a good one is one where
16 everyone is equally unhappy, in most instances. Well, where
17 we are; well, Your Honor, there are now 563 potentially
18 viable claims of survivors. I say potentially viable,
19 because that number includes more than 50 claims which Your
20 Honor has already disallowed, but with leave, without a
21 deadline.

22 THE COURT: One of the interesting -- the only
23 other point I would make, including this morning when I
24 issued another opinion -- I really wonder, for example, if
25 the case were dismissed, I decided -- central to most of

1 those claims' objection opinions was federal pleading
2 standards. And if the case is dismissed, and the litigation
3 goes back on State Court, I'm not sure that those decisions
4 count for anything, because the State -- this has been said
5 in multiple opinions, the State has quite different, in my
6 view, pleading standards, and has been missive in permitting
7 discoveries. Even though a bankruptcy court sustained
8 objections by applying federal pleading standards, if the
9 case doesn't survive, it may be more than 563 State Court
10 claims that you're dealing with.

11 MS. BALL: Well, Your Honor, to that point, one,
12 we are at the 500 claims we disclosed in February. But
13 there are some 403 CVA actions against parishes, very few of
14 which are going to be affected by the rulings that you've
15 talked about. And I assure you --

16 THE COURT: I agree.

17 MS. BALL: Okay. I assure you, particularly since
18 three out of four of those cases are pending against the
19 same 45 or so parishes; that they are all very much focused
20 on what happens if we don't have a deal. The remaining two
21 thirds of the parishes, perhaps their perspective is a
22 little different. But currently, the parities, primarily,
23 as you've heard, the Dioceses, the parishes and the
24 Committee, or more accurately really State Court counsel for
25 certain of the Committee members, are all focused on three

1 kinds of activities; one you've heard about, which is
2 mediation.

3 A small update as to areas of your prior inquiry,
4 Your Honor; the proposed releasees have been identified.
5 They're the parishes plus five affiliated entities.
6 Interestingly, as you mentioned, what we refer to as the IAC
7 transactions, meaning Independent Advisory Committee, the
8 Committee has concluded a settlement which, effectively
9 releases three of those five entities on effective date of a
10 plan, and all the remaining proposed releasees have provided
11 and continue to provide financial and real estate
12 information to facilitate the mediation.

13 We have two more sessions this week. Offers have
14 been exchanged. And with that, Your Honor, I think I should
15 end the discussion there.

16 THE COURT: I wish you success.

17 MS. BALL: We are clinging to that hope, Your
18 Honor. Litigation is the other activity, 140 cases have
19 been remanded, most to Judge Steinman, who sits in the
20 Regional CA part in Nassau and Suffolk County. What Your
21 Honor may not realize is that Jones Day represents two
22 Defendants, which are actually just the Diocese, but the
23 named Defendants are not separately incorporated nor any way
24 a juridic person. So, we are there. And Judge Steinman
25 expects the Diocese to be the main source of document

1 discovery, not surprisingly. The next big date in that
2 pathway is September 29.

3 THE COURT: How many of the EDNY cases have not
4 yet been remanded?

5 MS. BALL: Just under 100. With respect to Judge
6 (indiscernible) and the motion that we filed under
7 157(b)(5), it was fully briefed on September 8. But I
8 remind Your Honor, that that motion was conceived, intended,
9 and remains a safety valve, and always was to serve as one,
10 in the event Purdue is not, in our view, rightfully
11 resolved.

12 THE COURT: Consensual releases are just fine.

13 MS. BALL: Your Honor, I think you're going to
14 find new limits to coercion, but I guess we are aiming at
15 consensual releases. And then, Your Honor, the other third
16 -- well, the second path of, in litigation, is the insurance
17 litigation. And I think you've heard enough about that. We
18 have made a proposal -- because of course, we have no
19 hesitation in tendering whatever demands we get to the
20 insurers. So we're, we hope that will be resolved.

21 THE COURT: Has the District Court set a hearing,
22 your motion on the Southern District.

23 MS. BALL: Not as far as I am aware.

24 THE COURT: You said it was fully briefed on
25 September 8.

1 MS. BALL: Not as far as I am aware. The second
2 stream, well the third stream of activities and, perhaps, in
3 our view, the most important, are the plan-related
4 activities. We are pursuing every avenue to monetize the
5 state resources for survivors. There were three
6 transactions for which the Committee obtained derivative
7 standing. I've already mentioned that one, the Department
8 of Education and two diocesan high schools, the Committee
9 has concluded a settlement, effective upon a consensual
10 plan.

11 A second against a seminary, the Committee has
12 also concluded the terms of a settlement. And there should
13 shortly be a 9019 motion for this settlement with the
14 seminary, as it involves a very time sensitive transaction
15 with the State of New York, to take over all that real
16 estate for a price that has been determined to be
17 acceptable.

18 We have also recently been tasked, or have
19 undertaken, at the request of the Committee, every effort to
20 monetize the only remaining derivative action, and that's
21 the action against the cemetery preparation and the
22 permanent maintenance trust. That is moving forward,
23 meetings scheduled, already happening this week, and more
24 later this week.

25 THE COURT: Let me just say, in response to one of

1 your comments, my schedule for October and November is quite
2 full. But what I've been doing is, where matters need to be
3 heard, I've been scheduling them for like 4:30 or five
4 o'clock in the afternoon, so that anything that requires a
5 prompt hearing will get a prompt hearing, even though I'm at
6 trial for two months.

7 MS. BALL: We are very mindful of how busy and
8 hardworking you are, Judge, and we appreciate the heads up.

9 THE COURT: That doesn't matter. But I'm just
10 saying that if there's a 9019 that requires shortened notice
11 and prompt action, it's likely the hearings are going to be
12 like at five o'clock in the afternoon, but you'll get a
13 hearing.

14 MS. BALL: Thank you, Your Honor. And we
15 absolutely will be here. We can get to that.

16 The appraisal that you authorized earlier this
17 month for the spectrum has been completed, and our efforts
18 to get a major financing against the spectrum assets are
19 moving ahead. Indeed, the only thing that's left is
20 obtaining an investment-grade rating for that. That is
21 ongoing. It has been somewhat expensive, but we need it for
22 a plan.

23 The bar date amendment that the Court authorized
24 has cleared the way for diligence on the value of the
25 Diocesan insurance coverage in the period allocable to

1 Royal, now known as Arrowood. I note, out of three out of
2 five claims in this case, fall within the periods allocable
3 to the Royal Insurance coverage periods. It is
4 substantialist data that, which in the event of an Arrowood
5 insolvency enjoys a benefit of a New York State guarantee;
6 which is why we are seeking to try to get more cash on the
7 effective date for survivors, and will work with the
8 Committee to make sure that it does not jeopardize their
9 efforts in a trust, or whatever may result.

10 Although we think the answer is fairly clear, the
11 question of why a plan is better than dismissal --

12 THE COURT: I think clearly better than dismissal.
13 Obviously, it depends on the terms of the plan, but I've
14 said this multiple times --

15 MS. BALL: But Your Honor, we have, as you've also
16 heard, we've met with some 16 State Court counsel, we've met
17 with the Committee. But the question is why is the plan
18 better, since there's such substantial insurance in both
19 scenarios? So, for some State Court counsel that question
20 remains; for some parishes that question remains. And we
21 are dedicated to try to resolve that, to the obvious
22 conclusion, which you know we share.

23 THE COURT: And why do you believe that a plan is
24 better for the survivors than the litigation
25 (indiscernible)?

1 MS. BALL: I believe that a failure will surely
2 result in such State Court counsel, many parishes, and the
3 Diocese, being right back here next year. Indeed, it is
4 more likely than not, that those parishes that I described,
5 will have no choice, that we'll be here, that it will be
6 months later --

7 THE COURT: They may be on the other side of the
8 river --

9 MS. BALL: I would not guarantee that, Your Honor.
10 It may be months from now, and it will clearly be with less
11 resources. No one should want to experience that Groundhog
12 Day. It just would be never ending, and we'd be right back
13 here. To me, that's the easy answer.

14 THE COURT: One of the things I've focused on, and
15 maybe you disagree, in the plans that have been confirmed,
16 and the Diocese cases that have been confirmed, the claims
17 resolution process is a much more streamlined, not bound by
18 the Federal Rules of Civil Procedure, or really, even for
19 the State Rules of Civil Procedure. And personally, I view
20 it as an advantage to survivors being able to much more
21 quickly being able to resolve their claims and receive a
22 recovery, which is something I've said in writing, and from
23 the bench, I'm very focused on, want that to happen. But
24 there is so much more flexibility for what the Committee can
25 negotiate with the Debtors for a claims resolution process,

1 that will provide for a much speedier and efficient way of
2 actually getting recovery to the people who need it. Let me
3 stop there.

4 MS. BALL: Fairly and more rapidly, we
5 wholeheartedly endorse. Two comments; one somewhat on a
6 lighter note. We definitely share Mr. Burns' desire not to
7 be Camden or Rochester. Because both of those cases reached
8 an arrangement with the Committee, and are still months away
9 from getting out; Camden is more than a year. Nobody wants
10 to be in litigation.

11 Secondly, Your Honor, I just have to reserve, out
12 of respect for the survivors of the process, we have never
13 directly taken on valuation of the claims. That really is
14 something, frankly, in our judgment, that really needs to be
15 between the insurers and the Committee. That's when that
16 has relevance. So, we have, in order to facilitate
17 continuing discussions, we have never undertaken that.

18 However, I do think that I must dissent on the
19 representation of not a hope of fully paying the 500 or so
20 legitimate claims that remain here. Your Honor may recall,
21 there are no aggregate limits on these insurance policies.
22 And they are quite substantial coverage, in most, not all,
23 on most years. So, I think we're well aware of what we
24 think our uninsured exposure is, but that issue remains to
25 be seen. I'm hoping we never do have to wrangle about the

1 value of claims.

2 And that flexibility you mentioned, Your Honor, on
3 dealing with clients, Your Honor, that's why we talk about
4 potentially viable claims, including those you have
5 disallowed. We have excluded those that you have disallowed
6 and are on appeal, but we have some 11-plus appeals by Mr.
7 Anderson, and we have Mr. Amala appealing a release, and we
8 have Mr. Mersen appealing a few, among others. So, it is
9 unclear to me, in the context of dismissal or a trust, what
10 would happen with those claims. But I assume they fall into
11 that flexibility regime you just talked --

12 THE COURT: I think I asked Mr. Geremia this at
13 one of the claim objection hearings, which I think it dealt
14 with the release issue. Because the independent review
15 process didn't apply pleading standards, and didn't impose
16 the same requirements that State Law does --

17 MS. BALL: True.

18 THE COURT: -- or extending liability to the
19 Diocese, or they're (indiscernible) negotiated plan would
20 have the same claims resolution process or not, is not for
21 me to decide. But I just ... it doesn't ... but to be clear, it
22 doesn't mean the committee and the survivors should accept
23 anything that's offered because the claims resolution
24 process is simpler than that. I do not mean to say that at
25 all. But it should definitely enter into the calculus of

1 negotiations that survivors may see recoveries much quicker
2 if there is a consensual agreement. And if a consensual
3 agreement includes third-party releases, it's not going to
4 run afoul of whatever the Supreme Court does in Purdue.

5 You know, somebody told me, in one of the -- not
6 Rochester or Camden, one of the confirmed cases that had
7 third-party release and which never really became a big
8 issue during the confirmation hearing, and I asked the
9 question, were there survivors who voted against? And I was
10 told one or two. So, you know, with the right agreement
11 you'll get broad support.

12 MS. BALL: Consent will move this forward far more
13 quickly. That is a concept, Your Honor, we totally
14 understand. We also understand the numbers of clients held
15 by State Court counsel serving on the Committee; State Court
16 counsel, one of whose clients served on the Committee. And
17 it does boil down to one or two firms.

18 THE COURT: All right, leave it at that.

19 MS. BALL: That's it for today.

20 THE COURT: I have another hearing, I'm 10 minutes
21 late for already. And we have another matter in this case,
22 so we'll deal with that.

23 MS. BALL: We do, we have --

24 THE COURT: Ms. Dodd, are you going to deal?

25 MS. DINE: (indiscernible) but I may just --

1 THE COURT: Go ahead, please, go ahead Ms. Dodd.

2 Thank you, Ms. Ball.

3 MS. BALL: You're welcome.

4 MS. DINE: Your Honor, Karen Dine, Pachulski Stang
5 Ziehl & Jones, on behalf of the Committee. And I won't
6 belabor any points because I do know you want to move onto
7 the next matter. But I'd like to at least address to you,
8 as one, as Your Honor just noted, part of the issue with any
9 settlement, and whether being dismissed or not, is going to
10 depend on what the alternatives are. And the notion, from
11 the Debtor's counsel, the particular meeting with the State
12 Court counsel, that somehow the State Court counsel and
13 their claimants do not understand what is at stake here.
14 Frankly, it is very disturbing to us. And you know, they
15 know, many of these State Court counsel have been involved
16 in many cases. We are in touch with State Court counsel,
17 not (indiscernible) those who represent Committee members,
18 but those outside of the Committee members. And they are
19 very focused and unified by what we think that the level of
20 the contribution needs to be, from the Diocese and the
21 parties it is seeking compensation for.

22 And while we would absolutely prefer to have a
23 plan with a settlement trust, in which people can make their
24 claims, and it is streamlined, that all, again, depends on
25 the amount. And we don't --

1 THE COURT: I was remiss in waiting until almost
2 the end of my comments to make the point that a consensual
3 settlement was only going to be reached if the Committee, on
4 behalf of the survivors, believes that the amount of
5 compensation, in combination of the Diocese, parishes,
6 insurers, is fair. And you know, there are cases that have
7 resulted in confirmed plans where the insurance claims go
8 into a trust. The insurers want to spend the next many,
9 many years in litigation?

10 MS. DINE: I understand Your Honor. And Ms. Ball
11 speaks about respect for survivors, you know, not raising
12 the valuation issues. There's been, in my understanding, no
13 other case where there has been a level of direct objections
14 to survivor claims as there have been in this one. And as
15 you --

16 THE COURT: All I would say on this is, when I
17 raised the issue about estimation, which would deal with
18 value, I got resounding silence from both the Committee and
19 the Debtor.

20 MS. DINE: Understood, Your Honor. But as you
21 pointed out also, that for many of these claimants, where
22 the claims have, where Your Honor has now sustained the
23 objections to the claims, for some, that actually doesn't
24 really change the mix, because there may still be claims
25 against parishes and third parties. But also, it may

1 incentivize some, that State Court is, in fact, the better
2 outcome.

3 THE COURT: I didn't -- I never said that
4 estimation couldn't also deal with claims that may have
5 been, you know, objection sustained without prejudice or
6 whatever. I mean, what the parameters of that -- I think,
7 let's -- you know, the clock is running.

8 MS. DINE: And Your Honor, that is my overall
9 point. The Committee is very focused on the fact that there
10 is this October 31 deadline. We appreciate that parties are
11 still mediating, and we are continuing to mediate in good
12 faith, and that the Debtor is taking action to try and
13 modify its assets, to hopefully reach that sum. But
14 nonetheless, we are still, you know, only a few weeks away
15 from the deadlines.

16 THE COURT: Keep at it. Well, look, with respect
17 to the Committee's motion for an order for leave, for
18 standing, authority to prosecute, I'm going to take it under
19 submission.

20 MS. DINE: Understood, Your Honor, and I believe
21 the --

22 THE COURT: That leaves the discovery issue. Are
23 you going to argue that?

24 MS. DINE: Yes, Your Honor, and I'll allow Mr.
25 Burns to take my --

1 THE COURT: Okay, Mr. Burns? Who is going to --
2 pass it down the room, go ahead.

3 MR. BAIR: Good afternoon, Your Honor. My name is
4 Jesse Bair, special insurance counsel for the Committee. I
5 understand Your Honor is a bit short on time, so I'll
6 endeavor to keep this brief. Ms. Ball provided a nice segue
7 into this motion a moment ago. She mentioned the great
8 value of the insurance policies, the lack of aggregates in
9 certain years. But she also mentioned that three out of
10 five of the claims in this case fall in the Arrowood period,
11 and that's exactly what the Committee's 2004 motion is
12 targeted at here.

13 The Committee's motion seeks to understand
14 Arrowood's financial ability to pay under those policies.
15 And the Committee believes its 2004 requests are appropriate
16 for two reasons. First, the Committee's 2004 request fall
17 within the broad parameters of Rule 2004. They retain to
18 the property of the Debtor's estate, namely, the Arrowood
19 policies, as well as the Diocese' financial condition.

20 THE COURT: You wouldn't, and I understand in the
21 District Court, you've got standing, limited standing. But
22 this wouldn't be, this discovery, proposed discovery, would
23 not be appropriate in the District Court.

24 MR. BAIR: That's correct, Your Honor. And we
25 think Arrowood's brief actually makes that point quite

1 nicely. They say that we're seeking post-judgment discovery
2 prejudgment. And that's more or less correct. The
3 Committee, the insurance adversary proceeding relates to the
4 issue of whether Arrowood had the legal obligation to pay
5 under the policies. That's the issue being decided in the
6 insurance adversary proceeding. Our 2004 requests, on the
7 other hand, deal with the separate, unrelated issue of does
8 Arrowood have the financial ability to pay under those
9 policies. And we believe the cases that Arrowood cites, of
10 whether a policyholder or a tort plaintiff could get this
11 sort of discovery under the narrower federal rules, are
12 distinguishable.

13 The Committee, of course, is an entity that has
14 the statutory obligation to investigate a debtor and it's
15 property and financial conditions. And so, we think
16 comparing a Committee with its statutory, investigatory
17 obligations, to a policyholder in a typical coverage case,
18 is apples and oranges. It's ... there are different issues
19 that are being adjudicated --

20 THE COURT: Let's assume you get this discovery.

21 MR. BAIR: Okay.

22 THE COURT: Who's entitled to receive the results
23 of it. It's the Debtor that's the Plaintiff in the District
24 Court; they could receive this information, right?

25 MR. BAIR: Well, the Debtor has requested receipt

1 of this information, assuming that the Committee's motion is
2 granted. They've made that relief and we have, at present,
3 incorporated that into or proposed order. If that is an
4 issue that the Court is concerned about, the Committee would
5 still, still believes it is entitled to this information.

6 THE COURT: Who is the District Judge for the
7 Arrowood case?

8 MR. BAIR: It's Judge Rochon.

9 THE COURT: Tell me what the status is?

10 MR. BAIR: Well, counsel for the Diocese may weigh
11 in as well. But effectively, the status of the Arrowood
12 insurance adversary proceeding, is that discovery on the duty
13 to indemnify has been stayed. And so, the only issue being
14 litigated at present is the duty to defend. In other words,
15 Arrowood's duty to pay the Diocese' defense cost. And there
16 is discovery ongoing in that matter, but pertaining only to
17 the duty to defend, which I believe is limited to certain
18 issues regarding loss policies; whether Arrowood issued
19 policies in particular years, and if so, what the terms and
20 limits of those policies were; perhaps whether particular
21 parishes were incorporated -- were insured, in particular
22 years. So, that is ongoing. And I believe the Court
23 permitted limited discovery on the issue of notice; whether
24 the Diocese provided timely notice of the CVA claims. And
25 there's a bit of fine line that the judge drew there between

1 whether the notice evidence speaks to the merits of the
2 underlying case, which is not being considered, or whether
3 it does not. But effectively, the status is discovery on
4 the duty to defend, at present.

5 THE COURT: So, what -- I mean, I ... it's my
6 intention to call Judge Rochon.

7 MR. BAIR: Okay.

8 THE COURT: And to talk to her about the discovery
9 requests here, whatever orders she entered in the District
10 Court. I view it as my decision, whether or not to permit
11 this discovery, but I'm very keenly aware and focused on
12 what she's done in the -- who did she inherit the case from?
13 If she (indiscernible).

14 MR. BAIR: She inherited it from Judge Caproni.
15 Just one comment on that, Your Honor. I would say that the
16 reason certain of the discovery is limited in the District
17 Court, is because the Diocese had requested that limitation
18 to protect itself from certain merits to discovery, that it
19 believed may prejudice its ranks in the underlying case.
20 Here, by contrast, we're seeking financial information from
21 Arrowood. And so, it really doesn't speak to the same
22 issues that motivated the concern in that case. And that's
23 aside from the general point that I made earlier, that the
24 discovery we're seeking, it just doesn't overlap with the
25 legal (indiscernible) --

1 THE COURT: Does your discovery request run afoul
2 of any state insurance regulatory scheme?

3 MR. BAIR: No, not that we're aware of.

4 THE COURT: Let me hear from the other side.

5 MR. BAIR: Thank you, Your Honor.

6 MR. MOORE: Good afternoon, Your Honor. Brett
7 Moore from Porzio, Bromberg & Newman, on behalf of Arrowood.

8 Your Honor, I think I want to go back first just
9 to the initial statement by Committee counsel for the
10 earlier argument, which was, this is a five-point plan all
11 based on bargaining power. And --

12 THE COURT: I don't want to hear that. Let's
13 (indiscernible) --

14 MR. MOORE: Your Honor, my only point in raising
15 that is, 2004(b), as Your Honor well knows, allows
16 discovery, only that relates to the acts, conduct, property,
17 or liability --

18 THE COURT: Property. The policies are property
19 of the estate. They have, don't they have a right to
20 understand what the property estate is, what the value --
21 it's an asset of the estate. And the value, the potential
22 value -- here, the District Court will decide the coverage
23 issues. But what the potential -- if Arrowood is insolvent
24 and the District Court were to determine, yes, it's liable
25 on the policies, they'd get a big zero, other than potential

1 state recovery funds, okay. But they're asking about the
2 value of an asset of the estate. I have lots of cases where
3 I'm granted 2004 discovery against third parties, where
4 there's been avoidance claims, a whole host of things where
5 a committee has wanted to understand what's the value of the
6 property of the estate. Isn't that what they're asking for?

7 MR. MOORE: It's not, Your Honor.

8 THE COURT: Tell me why.

9 MR. MOORE: IF you look at, actually, the demands
10 that they put in there, they're asking for communications
11 between Arrowood and the claims monitor. They're asking for
12 communications relating to policyholder complaints.

13 THE COURT: Do you agree that they're entitled,
14 under 2004, to obtain discovery about Arrowood's ability to
15 meet any claims for the coverage years? Yes or no?

16 MR. MOORE: Not at this time, Your Honor, no.

17 THE COURT: Why not?

18 MR. MOORE: Because --

19 THE COURT: If not now, we're at a critical stage,
20 this case may get tossed, okay. The ability of the Debtors
21 and the insurers to put up money to come to a confirmed
22 plan, now is the time -- not three months from now or six
23 months from now -- it's now. So, tell me what it is that
24 they've asked for that doesn't go to Arrowood's ability to
25 satisfy claims for the policy years involved?

1 MR. MOORE: Respectfully, Your Honor, none of
2 their request go to that.

3 THE COURT: Oh, really?

4 MR. MOORE: There are financial statements for
5 Arrowood that are followed publicly. They have that
6 information in terms of assets.

7 THE COURT: Have you sat down with Mr. Burns and
8 sought to refine the discovery requests that would give the
9 Committee the information that it needs to evaluate
10 Arrowood's ability to satisfy claims if coverages failed?
11 Yes or no?

12 MR. MOORE: No, Your Honor.

13 THE COURT: Okay, well, you're going to do that.
14 Okay? You're going to do that tomorrow, okay. And you're
15 going to have a good faith meet and confer. Because I am
16 going to -- first I'm going to talk to Judge Rochon. But
17 I'm very strongly inclined to give Arrowood, to give the
18 Committee discovery about Arrowood's ability to satisfy
19 claims for the coverage years, okay. I've been hearing,
20 since I've gotten this case, that Arrowood is in serious
21 financial distress and doesn't have the ability to meet
22 claims, okay. This is going to be the way for the Committee
23 to test it. You think that their requests are overbroad.
24 You haven't done what I always require to be done: a meet
25 and confer. And we'll have, you know, we'll do a zoom

1 hearing late in the afternoon. So, today's Tuesday ... let me
2 see what my calendar for Thursday is.

3 CLERK: Judge, I believe you're on a train --

4 THE COURT: I know, I'm on a train to Washington.
5 I know. Thanks, Diana. I'm trying to look and see when I
6 can do this. Diana, what do we have on the calendar
7 tomorrow?

8 CLERK: At 10:00 AM we have the Marcus case,
9 otherwise it's clear.

10 THE COURT: Okay, let me just look at my other
11 calendar. Well, we're going to do it -- you're going to meet
12 and confer and we're going to have a Zoom hearing tomorrow
13 afternoon at 4:30. And I'm going to determine whether
14 there's been a good faith negotiation of the scope of
15 discovery regarding the financial ability of Arrowood to
16 meet claims for the coverage years. And I understand about
17 the, of the claims that have been filed, how many of them
18 are, you know, potentially would trigger the Arrowood
19 coverage. Okay.

20 The Committee is entitled to this. 2004 discovery
21 is expressly intended to permit a party in interest to obtain
22 discovery about the assets of the Debtor. These policies
23 are an asset of the Debtor. Yes, the District Court will
24 decide whether there's coverage. And ordinarily, you
25 couldn't get prejudgment discovery as to ability to pay.

1 But that's not what's before the Bankruptcy Court. So, I
2 want face-to-face meeting. You may be both from out of
3 town; rearrange your schedules. Meet tomorrow. We will
4 have a 4:30 Zoom. My courtroom deputy will provide the
5 link. We'll do a 4:30 Zoom. You'll update me on where they
6 are, what you've agreed on, what you disagreed on, make it
7 make the list as specific as possible. That's what's going
8 to happen tomorrow?

9 MR. MOORE: Very good, Your Honor, thank you.

10 THE COURT: Okay. All right, this matter is
11 adjourned. Diana, you can call the next case.

12 CLERK: So, the next case is going to be just in
13 courtroom, so I'm going to stop the Zoom and Jonahtan is
14 going to do the, take the ... record the hearing.

15 THE COURT: Thanks very much, Diana.

16 CLERK: You're welcome.

17 (Whereupon these proceedings were concluded.)
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

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Date: October 2, 2023

[& - actually]

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[claim - conclusion]

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EXHIBIT B

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 20-12345-mg

4 - - - - - x

5 In the Matter of:

6

7 THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 December 19, 2023

16 2:01 PM

17

18

19

20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

1 HEARING re Jones Day's Ninth Interim Application for
2 Allowance of Compensation for Services Rendered and
3 Reimbursement of Actual and Necessary Expenses Incurred
4 During Retention Period from June 1, 2023 to September 30,
5 2023 for Jones Day, Debtor's Attorney, period: 6/1/2023 to
6 9/30/2023, fee:\$4,613,361.75, expenses: \$53,593.33. (Doc #
7 2647, 2673, 2686, 2731)
8
9 HEARING re Ninth Interim Application of Alvarez & Marsal
10 North America, LLC for Allowance of Compensation for
11 Services Rendered and Reimbursement of Expenses Incurred as
12 Restructuring Advisor to the Debtor During the Period June 1
13 , 2023 Through September 30, 2023 for Alvarez & Marsal North
14 America , LLC , Other Professional , period : 6/1 /2023 to
15 9/30/ 2023, fee:\$706, 1 12.50, expenses: \$13,823.51. filed
16 by Alvarez & Marsal North America, LLC . (Doc # 2648, 2673,
17 2686, 2731)
18
19 HEARING re Ninth Application for Interim Professional
20 Compensation for Reed Smith LLP, Special Counsel, period:
21 6/1/2023 to 9/30/2023, fee:\$1 ,010,870.50, expenses:
22 \$153,662.18. filed by Reed Smith LLP. (Doc # 2649, 2670,
23 2686, 2731)
24
25 HEARING re Ninth Application for Interim Professional

1 Compensation for Professional Services Rendered and
2 Reimbursement of Expenses Incurred as Special Counsel to the
3 Debtor from June 1, 2023 through September 30, 2023 for
4 Nixon Peabody LLP. (Doc # 2650, 2670, 2686, 2731)

5
6 HEARING re Sixth Application for Interim Professional
7 Compensation for Services as Future Claims Representative
8 for Robert E. Gerber, Other Professional, period: 6/1/2023
9 to 9/30/2023, fee:\$86,240.00, expenses: \$448.41. filed by
10 Robert E. Gerber. (Doc # 2651, 2654, 2686, 2731)

11
12 HEARING re Ninth Interim Application For Allowance Of
13 Compensation And Reimbursement Of Expenses By Bums Bair LLP
14 As Special Insurance Counsel For The Period From June 1,
15 2023 Through September 30, 2023 for Bums Bowen Bair LLP,
16 Creditor Comm. Atty, period: 6/1/2023 to 9/30/2023,
17 fee:\$516,604.80, expenses: \$17,357.31. filed by Bums Bowen
18 Bair LLP. (Doc # 2652, 2654, 2686, 2731)

19
20 HEARING re Sixth Application for Interim Professional
21 Compensation for Services as Counsel to Future Claims
22 Representative for Joseph Hage Aaronson LLC, Other
23 Professional, period: 6/1/2023 to 9/30/2023, fee:\$9,810.00,
24 expenses: \$0. (Doc # 2653, 2654, 2686, 2731)

25

1 HEARING re Informal Conference Request of the Committee re
2 Production of Documents

3
4 HEARING re Ninth Interim Application For Allowance Of
5 Compensation And Reimbursement Of Expenses By Berkeley
6 Research Group, LLC As Financial Advisor For The Period From
7 June 1, 2023 Through September 30, 2023 for Berkeley
8 Research Group, LCC, Other Professional, period: 6/1/2023 to
9 9/30/2023, fee:\$318,659.00, expenses: \$4,230.36. filed by
10 Berkeley Research Group, LCC. (Doc No. 2661, 2685, 2686,
11 2731)

12
13 HEARING re Sixth Application for Interim Professional
14 Compensation for services rendered and reimbursement of
15 actual and necessary expenses incurred for Forchelli Deegan
16 Terrana LLP, Special Counsel, period: 6/1/2023 to 9/30/2023,
17 fee:\$9,495.00, expenses: \$26.65. filed by Forchelli Deegan
18 Terrana LLP. (Doc # 2663, 2686, 2731)

19
20 HEARING re Ninth Interim Application For Allowance Of
21 Compensation And Reimbursement Of Expenses By Bums Bair LLP
22 As Special Insurance Counsel For The Period From June 1,
23 2023 Through September 30, 2023 for Bums Bowen Bair LLP,
24 Creditor Comm. Atty, period: 6/1/2023 to 9/30/2023,
25 fee:\$516,604.80, expenses: \$17,357.31. filed by Bums Bowen

1 Bair LLP. (Doc # 2662, 2665, 2686, 2731)
2
3 HEARING re Ninth Interim Application For Allowance Of
4 Compensation And Reimbursement Of Expenses By Pachulski
5 Stang Ziehl & Jones LLP As Counsel To The Official Committee
6 Of Unsecured Creditors For The Period From June 1, 2023
7 Through September 30, 2023 for Pachulski Stang Ziehl & Jones
8 LLP, Creditor Comm. Atty, period: 6/1/2023 to 9/30/2023,
9 fee:\$3,933,595.25, expenses: \$880,996.95. filed by Pachulski
10 Stang Ziehl & Jones LLP. (Doc # 2664, 2665, 2686, 2725,
11 2726, 2731)
12
13 HEARING re Ninth Application for Interim Professional
14 Compensation Quarterly Report For June 2023 through
15 September 2023 for Sitrick And Company Inc., Debtor's
16 Attorney, period: 6/1/2023 to 9/30/2023, fee:\$22,244.00,
17 expenses: \$0.50. (Doc # 2666, 2686, 2731)
18
19 HEARING re Amended Third Application for Interim
20 Professional Compensation for Lerman Senter PLLC, Special
21 Counsel, period: 6/1/2023 to 9/30/2023, fee:\$6,247.50,
22 expenses: \$0. (Doc # 2680, 2686, 2721, 2731)
23
24 HEARING re Corrected Motion Of The Official Committee Of
25 Unsecured Creditors Pursuant To Sections 105, 305 and 362 Of

1 The Bankruptcy Code To Permit Proceeding With Certain State
2 Court Actions And Temporary Suspension Of The Chapter 11
3 Case. (Doc# 2677 to 2679, 2681, 2710, 2711, 2712, 2713,
4 2727, 2729, 2730)

5
6 HEARING re Adversary proceeding: 20-01226-mg The Roman
7 Catholic Diocese of Rockville Centre, Ne v. ARK 320 DOE, et
8 al. Doc# 204 Notice of Hearing /Notice of Status Conference
9 in Connection with Discovery (related document(s)59)

10
11 HEARING re Doc# 2734 Notice of Agenda / Amended Agenda for
12 Matters Scheduled for December 19, 2023 at 2:00 p.m.
13 (Prevailing Eastern Time) (related document(s)2731)

14
15 HEARING re Doc# 2736 Notice of Agenda / Second Amended
16 Agenda for Matters Scheduled for December 19, 2023 at 2:00
17 p.m. (Prevailing Eastern Time) (related document(s)2734)

18
19 HEARING re Doc# 2735 Notice of Hearing /Notice of Status
20 Conference in Connection with Discovery

21
22 HEARING re Informal Conference Request. (Doc ## 320, 794,
23 2732)

24
25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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1 ALSO PRESENT:

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3 CHARLES MOORE

4 PAUL SHIELDS

5 ROBERT E. GERBER

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. All right. Good
3 afternoon. We are obviously here in the Roman Catholic
4 Diocese of Rockville Centre, 20-12345. I have the amended
5 agenda.

6 MR. BUTLER: Good morning, Your Honor. Andrew
7 Butler with Jones Day for the Debtor.

8 Your Honor, we filed a second amended agenda --

9 THE COURT: We have the second-amended agenda.

10 MR. BUTLER: Docket Number 2736. We apologize for
11 the late addition, Your Honor.

12 The first items set on that hearing agenda are the
13 interim fee applications. We have two items after that,
14 both discovery items, and one of which will be handled by my
15 colleague, Mr. Stephens, and the other I believe by Ms. Dine
16 from the Pachulski firm. And then the Committee test case
17 motion after that.

18 On the interim fee applications, Your Honor, two
19 points to begin with. One, a global update, and then one,
20 an update for the Jones Day fee application in particular if
21 we go there next in the order of the agenda.

22 The global update -- and I'm happy for Mr. Zipes
23 to confirm this as well -- but my understanding is that Mr.
24 Zipes' office, the Office of United States Trustee, has
25 requested a ten percent continuing holdback for this fee

1 application going forward. And my understanding is that all
2 professionals have agreed to that consensually. And if Mr.
3 Zipes has anything to add, I'm happy to have him do so.

4 THE COURT: Well, Mr. Butler, we can talk about
5 this a little bit later. But not including this fee
6 application that I have in front of me, series of fee
7 applications today, I was strongly inclined to have a 50
8 percent holdback going forward. How long this is going
9 forward, I don't know. But this case is in terrible shape.
10 The Debtor has quite openly said it can't afford to continue
11 on. Fees are out of control. And I will come to this
12 after, but I came to the bench having in mind beginning with
13 the next round of fee applications a 50 percent holdback.

14 So if you want to go ahead with the applications,
15 we can.

16 MR. BUTLER: Thank you, Your Honor. That was the
17 global update on the holdback and then a specific update on
18 the Jones Day fee application.

19 Your Honor, often the United States Trustee
20 reviews our applications, discusses those interim
21 applications with us. We did that again on this round. The
22 United States Trustee's Office raised a number of issues
23 with us. We reviewed those issues with them, discussed
24 them, reviewed them internally, and have agreed to an
25 \$18,000 consensual reduction with the Office of the United

1 States Trustee for the Jones Day interim fee application.
2 That's for fees, not costs or expenses. We're thankful that
3 we're able to work that out with the Office of the United
4 States Trustee without a formal objection. I wanted to
5 recognize that and state so on the record.

6 THE COURT: Mr. Zipes, if you could limit it to
7 the discussion of the Jones Day application, but I would
8 like to hear from you about your office's review of this
9 very large group of applications generally. We'll obviously
10 go through them individually. I have some questions on
11 several of them. So go ahead, Mr. Zipes, if you would.

12 MR. ZIPES: Your Honor, as this Court is aware,
13 there's approximately nine interim fee applications that
14 have been filed in this case, and not for every professional
15 because some had not put in fee applications for every
16 interim --

17 THE COURT: Yeah. There were some where the
18 applications were small, it was more cost-effective to hold
19 off and -- with some of them.

20 MR. ZIPES: Yes. And, Your Honor, we did have
21 this discussion about the holdback. And I think that the
22 professionals are reluctantly agreeable to --

23 THE COURT: I'm sure they're not agreeable to the
24 50 percent, but that's my -- well, we can talk about that
25 after.

1 MR. ZIPES: But there are statements on the
2 record, as this Court noted. There's a cash problem and
3 this case has been going on. So I don't think, Your Honor,
4 we specifically discussed going forward, but it is a topic
5 of concern.

6 THE COURT: Very much.

7 MR. ZIPES: Yes. And, Your Honor, we do review
8 interim fees and try to get comments, but we don't
9 necessarily have comments to every fee application for every
10 hearing. So we try to get comments as we can. And this
11 Court doesn't necessarily get the benefit of some of the
12 back and forth, and probably rightfully so. But, Your
13 Honor, we do review fee applications for the standard things
14 like vague entries and time entries that don't comply with
15 the U.S. Trustee guidelines and case precedent in this court
16 and in the circuit.

17 So, Your Honor, we do reserve our rights until the
18 end of the --

19 THE COURT: The end of the case, yes.

20 MR. ZIPES: -- case to review legal fees and
21 professional fees generally. And in some cases, it turns
22 out that the discussion is subsumed by lack of funds in the
23 case as well. So there's a certain balance on how much to
24 review on an interim basis versus --

25 THE COURT: Let me just ask you. Mr. Butler has

1 indicated the consensual agreement of Jones Day for an
2 \$18,000 reduction. Are there other applications that we're
3 going to deal with today as to which there are also
4 consensual adjustments?

5 MR. ZIPES: Your Honor, there aren't any that we
6 brought to any professional's attention, but we are
7 reviewing them. And we sort of send the emails not
8 necessarily connected to specific hearings saying we looked
9 at this fee application and had X, Y, and Z issues. So
10 professionals have been getting that throughout the
11 bankruptcy case.

12 THE COURT: Okay.

13 MR. ZIPES: I don't know if that answers your
14 question.

15 THE COURT: I think it does for now. All right.
16 Mr. Butler, so the Jones Day application sought fees of
17 \$4,613,361.75 and expenses of \$53,593.33.

18 MR. BUTLER: Yes, Your Honor.

19 THE COURT: And you've indicated that your firm
20 has agreed to an \$18,000 reduction in the fees.

21 MR. BUTLER: Yes, Your Honor. As well as a ten
22 percent holdback.

23 MR. BUTLER: And the ten percent holdback. Does
24 anybody wish to be heard with respect to the Jones Day
25 application?

1 All right, it is approved with those changes.

2 MR. BUTLER: Thank you, Your Honor.

3 THE COURT: So the next on my list, may not be the
4 same as yours, is the Alvarez & Marsal application. Is
5 there someone who is going to speak to that? I should have
6 said the Jones Day application is ECF 2647. The Alvarez
7 application is 2678.

8 MR. MOORE: Good afternoon, Your Honor. Charles
9 Moore for Alvarez & Marsal.

10 THE COURT: And so the application was for fees of
11 \$706,112.50 and expenses of \$13,823.51.

12 MR. MOORE: That's correct.

13 THE COURT: Just give me a second. All right.
14 Does anybody else wish to be heard with respect to the
15 Alvarez application?

16 All right. It's approved subject again to the ten
17 percent holdback for this one. Okay?

18 MR. MOORE: Thank you, Your Honor.

19 THE COURT: Thank you very much. Next I have is
20 Reed Smith.

21 MR. JAVIAN: Good afternoon, Your Honor. Aaron
22 Javian for Reed Smith, LLP. Can you hear me?

23 THE COURT: Yes, I can. And the Reed Smith
24 application is ECF 2649. It seeks fees of \$1,010,870.50 and
25 expenses of \$22,910.93. It also seeks fees and expenses for

1 Debtor's consulting expert, KCIC LLC, of \$130,751.25. Go
2 ahead if you want to be heard.

3 MR. JAVIAN: That's correct, Your Honor. I don't
4 have anything else to add to that other than that I am
5 available if Your Honor has any questions about the fee
6 application.

7 THE COURT: Anybody else wish to be heard? All
8 right.

9 So both the Reed Smith application and the KCIC
10 LLC applications are approved.

11 MR. JAVIAN: Thank you, Your Honor.

12 THE COURT: All right. Next on my list is Nixon,
13 ECF 2650. And Nixon Peabody is -- their application is at
14 ECF 2650. It seeks fees of \$273,698.50 and expenses of
15 \$647.59. Is someone to speak to the Nixon Peabody
16 application?

17 MR. DESIDERIO: Good afternoon, Your Honor. Chris
18 Desiderio from Nixon Peabody. And that accurately reflects
19 the fee application for this period.

20 THE COURT: All right. Does anybody else wish to
21 be heard with respect to the Nixon Peabody application?

22 It's approved as well.

23 MR. DESIDERIO: Thank you, Your Honor.

24 THE COURT: Next on my list is the sixth interim
25 application of the future claims representative. It's at

1 ECF 2651 and it seeks fees of \$86,240 and expenses of
2 \$448.41. Mr. Gerber?

3 MR. GERBER: Yes. That's correct, Your Honor.
4 And I rest on the motion unless the Court has questions.

5 THE COURT: Does anybody wish to be heard with
6 respect to the future claims representative application?

7 All right. It's approved.

8 Next is the sixth interim fee application of
9 Michael R. Hogan. It's at ECF 2652. Who is going to
10 present on that?

11 MR. GERBER: I'm not sure if Mr. Hogan was able to
12 get on, Your Honor. But the \$7,990 that the Court mentioned
13 is the correct figure. He received no payments on account
14 of monthly fee statements that weren't large enough to
15 warrant the filing of.

16 THE COURT: Right. So this one is, as I said, at
17 ECF 2652. He is the financial advisor to the future claims
18 representative. And again, it's \$7,990 in fees and no
19 expenses. Anybody wish to be heard?

20 All right. It is approved.

21 Next is the sixth interim fee application of
22 Joseph Hage Aaronson LLC. It's at ECF 2653. It seeks fees
23 of \$9,810 and no expenses.

24 Mr. Gerber?

25 MR. GERBER: Yes. I will speak on the firm's

1 behalf on that. The Court's understanding of the figures is
2 correct. And once again, I will rest on the motion unless
3 the Court has any questions.

4 THE COURT: All right. Does anybody wish to be
5 heard with respect to that application?

6 All right, it is approved as well.

7 Next is the ninth interim fee application of
8 Berkeley Research Group LLC. It's at ECF 2661 and it seeks
9 fees of \$318,659 and expenses of \$4,230.36. Who is going to
10 speak to that?

11 MR. SHIELDS: Good afternoon, Your Honor. This is
12 Paul Shields from Berkeley Research Group. And that does
13 accurately reflect the amount sought.

14 THE COURT: Does anybody else wish to be heard
15 with respect to the Berkeley Research? All right. It's
16 approved as well.

17 MR. SHIELDS: Thank you, Your Honor.

18 THE COURT: Thank you. Next is the sixth interim
19 fee application for Forchelli Deegan. And it's at ECF 2663
20 and it seeks fees of \$9,495 and expenses of \$26.65.

21 MR. LUCKMAN: Good afternoon, Your Honor. Gerard
22 Luckman, Forchelli Deegan Terrana, special counsel to the
23 Debtor. That accurately reflects the application, Your
24 Honor, unless Your Honor has any questions.

25 THE COURT: Anybody else want to be heard with

1 respect to that?

2 All right. It is approved as well.

3 MR. LUCKMAN: Thank you, Your Honor.

4 THE COURT: Next is the ninth interim application
5 of Pachulski Stang Ziehl & Jones LLC as counsel to the
6 Committee. It's at ECF 2664 and it seeks fees of
7 \$3,933,595.25 and expenses of \$880,996.95. Mr. Stang?

8 MR. STANG: Good afternoon, Your Honor. James
9 Stang, Pachulski Stang Ziehl & Jones, appearing for the
10 firm.

11 THE COURT: I have an issue that -- well, first
12 let me see whether anybody else wishes to be heard with
13 respect to the Pachulski application. Mr. Zipes?

14 MR. ZIPES: Your Honor, I don't know if it's
15 appropriate at this time, but I did note that there was a
16 requirement that a letter be sent with expenses related to
17 the litigation, and that was sent to my office. I just
18 wanted to make the Court aware.

19 THE COURT: Thank you, Mr. Zipes.

20 I have -- for the most part, Mr. Stang, I don't
21 have a question except for one issue. And it involves your
22 firm and Burns Bair as well. And I will deal with that
23 issue. So I'm not giving my approval of the application
24 yet. Here's -- let me lay out this issue.

25 The Court was presented with a group of motions

1 seeking to lift the automatic stay filed by certain
2 claimants for an order pursuant to 362(d) and Bankruptcy
3 Rule 4001(a) to allow the claimants to make settlement
4 demands on the diocese. The Committee filed a joinder,
5 which is at ECF 2488.

6 I heard argument on those motions, which were
7 really carried by the committee, on October 23rd, 2023 and
8 entered an order denying the motions on October 24th, 2023.
9 Mr. Burns was the one who argue the motion here.

10 When I reviewed the fee applications from the firm
11 and Burns Bair, I tried as best I could to identify the fees
12 that were charged for the motions that -- I mean the gist of
13 the motions was seeking to compel the Diocese -- allow the
14 Claimants to provide a demand, a settlement demand for the
15 Diocese to give to the insurers. And I would describe the
16 strategy, the motion, as concocted, misguided strategy by
17 the committee. An absolute waste. I denied the motion from
18 the bench. I entered the order the next day.

19 When I asked the question what prevents you from
20 having your clients make -- having the Claimants make a
21 demand? And the answer was nothing. I'm still waiting to
22 see that. I don't know. There have been some updates as to
23 whether or not those demands have ever been made.

24 MR. STANG: I can give you that --

25 THE COURT: Just let me finish. I'm venting.

1 It was an utter, complete waste of time. And
2 while you didn't carry the laboring -- when I say you, your
3 firm didn't carry the laboring oar on it, I tried to
4 identify what if any fees your firm was charging in
5 connection with that motion -- motions. There were separate
6 motions filed by claimants, but the real gist of it was the
7 joinder filed by the Committee, and Mr. Burns argued that.

8 So I don't know how much responsibility you and
9 your firm bear for that, whether we charged anything in
10 connection with it. I don't know whether you can tell me
11 offhand or not.

12 MR. STANG: I would have the breakdown for Your
13 Honor, but we will attempt to do that.

14 THE COURT: So I don't know, is Mr. Burns here or
15 is he on the...

16 MR. STANG: Mr. Bair is here.

17 THE COURT: Mr. Bair is here. So you'll bear my
18 ire when you stand.

19 You know, whatever you may think, I think I've
20 bene pretty reserved throughout this case. There's lots of
21 difficult issues. This was a joke. And in going through
22 your firm's fees, you identified \$84,366.60. That doesn't
23 include the argument, not that the argument was really
24 extensive, because the fee period cut off in September and
25 we didn't -- the argument had gotten adjourned and it got

1 pushed so it was made in October. So I don't think I've
2 seen the last of what you would dare put in a fee
3 application for it.

4 But I am appalled. There are so many difficult
5 issues in this case that you've all worked so hard for. And
6 it costs a lot of money. That's not one of them. It wasn't
7 even close. So you stand there to bear the brunt of my
8 diatribe about it. And Mr. Burns made the argument and, you
9 know, he's special insurance counsel.

10 Well, I can tell you what I'm going to do now is
11 I'm ordering the two firms to submit declarations by January
12 3rd that specifically identify the time entries and fee
13 amounts sought in connection with the motions. And I
14 couldn't parcel it from your firm, Mr. Stang. As best I
15 could tell from Burns Bair, it was \$84,366. It's being
16 disallowed. I've already prepared a written order I may
17 mark up a little bit explaining what the standards are that
18 the Court is supposed to apply in reviewing fee
19 applications.

20 Mr. Stang, this obviously has been a really
21 expensive case. On the whole I think your firm has done
22 excellent work. And you had the misfortune of standing up
23 first to hear me vent about it.

24 MR. STANG: Your Honor, both of us represent the
25 Committee. So I'm not going to put this all on Mr. Bair.

1 Our time is what it would be for the declaration.

2 But --

3 THE COURT: Well, you're not going to charge for
4 the declaration.

5 MR. STANG: I'm not going to sidestep answering
6 your -- or responding to what you said just because Mr. Bair
7 is special insurance counsel.

8 MR. BAIR: And I'm happy to respond.

9 THE COURT: Yeah, and I'm going to have you.

10 So, look, I'm not going to give final approval of
11 your fee application until I know how much of anything needs
12 to be deducted from it. Or you could talk to Mr. Zipes if
13 there is an amount and agree on a voluntary reduction for
14 this. And let me be clear, anything having to do with that
15 motion is coming out, is not getting approved. And I
16 suspect because they are special insurance counsel that they
17 have -- you know, it -- Mr. Burns thought it was a great
18 motion. Okay, I'm finished venting.

19 MR. STANG: Your Honor, the professionals' concern
20 was that making a demand upon the Debtor -- and by the way,
21 at some point I think the Debtor said the Committee made the
22 demands. The Committee did not make the demands.

23 THE COURT: All right, the claimants.

24 MR. STANG: It was state court counsel made the
25 demands. But in speaking with them, it was part of a larger

1 strategy on how to put pressure on the insurance companies.
2 We felt -- we were concerned that because the insurance
3 policies are property of the estate that putting that demand
4 on the Debtor, who we hope has communicated with its
5 carriers as to whether they're going to pay those demands
6 and if not, why not, could be a violation of the stay.

7 Now, Your Honor, I understand -- I was at the --
8 if I wasn't at the hearing, I was attending it. I heard
9 what you had to say.

10 THE COURT: You were on the screen.

11 MR. STANG: We've been reminded of your
12 characterization of the motion by Debtor's counsel. You are
13 going to see that in a slide presentation they're going to
14 put on today. But we had a legitimate concern. And you
15 didn't.

16 THE COURT: So why didn't you just come and say
17 that, Judge, we think that -- and I said it at the hearing.
18 I asked the question. I said is there anything that stops
19 you from making a demand, a settlement demand? No, of
20 course the automatic stay doesn't stop you from making a
21 settlement -- they can ignore it. They can do what they
22 want.

23 MR. STANG: They could also seek sanctions against
24 us for violating the stay.

25 THE COURT: For making a settlement demand? I

1 don't think so.

2 MR. STANG: Well, a demand that was then going to
3 be conveyed to the carriers that could have affected
4 property of the estate given the nature of these policies.

5 THE COURT: Well, if the Debtor receives a demand,
6 I think they're obligated under the policy to pass it on to
7 the insurance company. I mean, it really isn't rocket
8 science. I've had enough to say about this.

9 MR. STANG: Okay. Your Honor, we will submit the
10 declaration and --

11 THE COURT: Let's put it this way. The sooner you
12 submit the declaration, the faster I will approve your fees.

13 MR. STANG: Given the time difference, accounting
14 will be working on it today. Thank you, Your Honor.

15 THE COURT: Okay. Your turn.

16 So the ninth interim fee application of Burns Bair
17 LLP as special insurance counsel to the Unsecured Creditors'
18 Committee. It's at ECF 2662. It seeks fees of \$516,604.80
19 and expenses of \$17,357.31, which reflects a reduction of
20 \$1,808.80 for two flights that were incorrectly included in
21 the September invoice.

22 MR. BAIR: That's correct, Your Honor.

23 THE COURT: So make your appearance and then
24 we'll...

25 MR. BAIR: Yes, Your Honor. Jesse Bair, special

1 insurance counsel on behalf of the Committee. And Your
2 Honor correctly reported the figures.

3 THE COURT: Well, when I -- when you say I
4 correctly reported the -- I correctly reported what your fee
5 application is. I told you my clerks and I did the best we
6 could in trying to isolate out how much you were charging
7 for the joinder. What it was a joinder. And we saw it as
8 \$84,366.60. I don't know whether we missed something or put
9 something in there that we shouldn't have.

10 MR. BAIR: I don't know offhand, Your Honor. We
11 would have to take a look at that.

12 THE COURT: Okay.

13 MR. BAIR: I don't have a sense of -- that very
14 well could be accurate, Your Honor.

15 THE COURT: Well, again, the order I'm going to
16 enter is going to require that you file a declaration by
17 January 3rd (indiscernible) Debtor, but...

18 MR. BAIR: Your Honor, if I may could I have a
19 moment to lay the background of the motion?

20 THE COURT: Sure. You can.

21 MR. BAIR: And I appreciate Your Honor's ruling.

22 THE COURT: Well, I ruled on the motion right
23 away.

24 MR. BAIR: Yes.

25 THE COURT: It was the next day when I entered the

1 order. I was gentle about it at the time. I've only had
2 steam coming out of my ears since, particularly by the fee
3 applications.

4 MR. BAIR: Thank you, Your Honor. By way of
5 background, we represent certain committees in these cases
6 around the country as special insurance counsel. And so in
7 the Rochester Diocesan bankruptcy, the Committee in that
8 case served a number of demand letters. There's one non-
9 settling insurer in that case. And so as a way to hopefully
10 move that case forward towards potentially one day a global
11 resolution, the Committee there sent a series of demand
12 letters to that insurance company. That insurance company
13 responded in part by asserting that the automatic stay
14 applied and that those letters were in violation of the stay
15 such that those demands were ineffective.

16 That issue was never brought before the Court, but
17 that was the response from the carriers. And so --

18 THE COURT: All you had to do was at one of the
19 many hearings in the case, Judge, we would like to serve a
20 demand -- or the claimants would like to serve a demand and
21 we're uncomfortable -- we had this experience in Rochester,
22 and I would have done exactly what I did when I heard the
23 motion. First, I would have asked the Debtor -- I mean,
24 they said at that hearing make a demand. You know?

25 MR. BAIR: Thank you, Your Honor.

1 THE COURT: And we wouldn't have incurred that
2 \$84,000-plus in fees on a worthless motion.

3 MR. BAIR: I appreciate that, Your Honor. After
4 the -- unfortunately, after the Rochester events took place,
5 a decision was made in the Syracuse case to seek relief.
6 Given CNA's position in Rochester, the Committee in Syracuse
7 wanted to ensure that the demands would be effective.

8 THE COURT: Well, but the demand you made is to
9 the Debtor, not to the insurance company.

10 MR. BAIR: Understood. And we actually agree with
11 Your Honor's ruling that the stay doesn't prohibit these
12 demands. But unfortunately in Syracuse, the judge in that
13 case ruled against the Committee and held that the automatic
14 stay did apply to prohibit the demands. And so --

15 THE COURT: A demand on the Debtor?

16 MR. BAIR: Correct, Your Honor. And so we lost
17 that decision unfortunately to some of the insurance
18 carriers.

19 And so after the Syracuse decision came out -- and
20 we had dialogue with the Debtor on this -- the Debtor had
21 the view, which turned out to be correct in Your Honor's
22 opinion, that the automatic stay didn't apply. However, as
23 the Committee, we felt we were in a position --

24 THE COURT: All you've got to do is ask me. And I
25 would have turned to the Debtor and said do you have an

1 objection to serving a demand on -- some of the demands on
2 here. You said you did that and they told you no. So
3 instead you spent \$85,000 on a motion.

4 MR. BAIR: Obviously we will abide by Your Honor's
5 ruling. I just wanted to inform the Court about the
6 background that informed why this occurred.

7 So after the Syracuse ruling, we felt that if we
8 made demands, the insurance carriers would take the
9 position, which they did in the motions, that those demands
10 would violate the automatic stay and, as Mr. Stang pointed
11 out, potentially seek remedies as a violation of that and/or
12 state that the demands were ineffective.

13 In the insurance company's responses to our
14 motion, which were quite voluminous -- they filed a number
15 of them -- the Syracuse decision was attached, a transcript,
16 to those decisions. And so again, Your Honor, we were
17 pleased with your ultimate decision that allowed the state
18 court counsel to ultimately send the demand letters.

19 THE COURT: How many demand letters have been
20 sent? Because I had asked about this at another hearing.
21 Well, we're still kind of working on it.

22 MR. BAIR: So of the originally 38, a number of
23 them were Arrowood cases. And so there are 14 LMI
24 interstate demands that have been sent to date. We thought
25 there was one more, but we have now learned that the state

1 court lawyers were not able to connect with that client, so
2 that one is still pending. But there are 14 that have been
3 sent. The responses to those are to our knowledge currently
4 due either at the end of this month or early January. We
5 don't have insight into what the Debtor has done, but we
6 assume, acting as a reasonably prudent insured, they would
7 have requested their carriers pay those demands. And
8 obviously --

9 THE COURT: Well, they don't want to blow their
10 coverage, so they're going to make sure that they let the
11 insurers know there's a demand.

12 MR. BAIR: We would hope so, Your Honor. And so
13 obviously we are respectful of Your Honor's decision. We
14 will of course abide by that. But I did want to provide the
15 background of the reason the Committee felt that we were
16 forced to bring the motion was the negative decision in the
17 other New York Diocesan case that we -- at least at the time
18 as the Committee did feel comfortable, you know, not seeking
19 relief given the order where we lost. Obviously Your Honor
20 had a different view of that. And we are grateful we were
21 able to send the demands. We were not able to send them in
22 Syracuse. And so that's why we filed the motion. Your
23 Honor will give that justification whatever weight he deems
24 appropriate.

25 THE COURT: I'm telling you, you're not getting

1 paid for the motion.

2 MR. BAIR: Okay, understood.

3 THE COURT: This case obviously was before Judge
4 Chapman before it moved in front of me. One of the things
5 I've always tried to make clear -- and we've had a number of
6 status Zoom conferences -- if you have an issue and you
7 can't -- first approach the Debtor. And if you agree, well,
8 we'll put it in a letter. And if you can't, you can request
9 a conference. And I'll usually have within a day or two and
10 resolve it. And if I heard both sides, if the Debtor took
11 the position no, they can't do this and your position was
12 you should, (indiscernible) the motion. Okay.

13 MR. BAIR: I don't have anything further unless
14 Your Honor has any questions.

15 THE COURT: This is -- you know, it was a big
16 enough piece of the total fee application that was filed
17 that maybe got me on a bad day. But it just -- it's kind of
18 been chewing at me for awhile.

19 Okay, Mr. Stang?

20 MR. STANG: Your Honor, I just wanted to
21 supplement or emphasize something Mr. Bair said. It would
22 be one thing where the Debtor says it's okay, we're not
23 going to assert a stay violation. But the insurance
24 carriers said this is essentially null and void because it
25 violates the stay.

1 THE COURT: Ask for a conference and we'll have a
2 quick conference and you'll get a quick answer and you won't
3 spend \$85,000 writing a motion.

4 MR. STANG: I just wanted to point out this isn't
5 a two-party issue. It's a multi-party issue with insurance
6 companies who said --

7 THE COURT: I'm the judge.

8 MR. STANG: You are the judge. And we communicate
9 to you through motions. And occasionally --

10 THE COURT: Well, yes, with conferences. And
11 we've had conferences.

12 MR. STANG: I understand. I would be stunned and
13 surprised --

14 THE COURT: I do conferences -- everybody should
15 know, I think other than one session where everyone agreed,
16 the U.S. Trustee was here and we had an off-the-record
17 discussion at some point. But otherwise, everything else is
18 on the record. That's my typical...

19 MR. STANG: I would be loath to speculate whether
20 the insurance carriers would ask you for permission to brief
21 the issue of whether that demand was enforceable when the
22 Debtor communicated it to them without stay relief. But
23 Your Honor --

24 THE COURT: Look, as you know, I wasn't a
25 bankruptcy lawyer. But I did practice law for 34 years as a

1 litigator and I actually spent -- it wasn't the majority of
2 my time, but was involved in insurance coverage litigation,
3 and usually on the side of the insurers. So I am not a
4 total neophyte when it comes to insurance coverage issues.
5 Enough said on the subject.

6 MR. STANG: Okay. Thank you, Your Honor.

7 MR. BAIR: Anything further, Your Honor?

8 THE COURT: No.

9 MR. BAIR: Thank you.

10 THE COURT: Next is the sixth interim fee
11 application of Forchelli Deegan Terrana LLP. It's at ECF
12 2663. It's application fees of \$9,495 and expenses of
13 \$26.65. Is there a representative of the firm?

14 MR. BUTLER: Your Honor, Andrew Butler with Jones
15 Day for the Debtor. I believe Mr. Luckman already addressed
16 this with Your Honor.

17 THE COURT: Yeah. It was -- it's approved. It's
18 approved. Let me get back to where I was.

19 Mr. Stang, from my notes just to come back to -- I
20 don't know whether your firm has fees. What raised
21 questions for me is I didn't know whether it is included in
22 this category. You have a summary of hours and fees
23 organized by task. And for insurance litigation it was
24 \$111,980.50. (indiscernible) insurance litigation not
25 involving this. I didn't know whether anything relating to

1 the subject we just finished discussing is sort of embedded
2 in that or not.

3 MR. STANG: Your Honor, we will review the bill in
4 total and not just the category that might have encompassed
5 it.

6 THE COURT: Mr. Zipes, did you have any issues
7 about the Pachulski Stang application?

8 MR. ZIPES: Your Honor, my office is frankly still
9 reviewing this one and the -- we are going to offer comments
10 not necessarily in conjunction with this fee hearing. So as
11 everything is (indiscernible).

12 THE COURT: Okay. All right. So I've asked all
13 my questions on it. I'll wait to see what your response is
14 on this. Okay.

15 Next is Sitrick and Company. The application is
16 at ECF 2666. Fees of \$22,244 and 50 cents in expenses. I
17 don't even need to hear this, but it's approved.

18 Last is the amended third interim application of
19 Lerman Senter PLLC. It's at ECF 2721. It seeks fees of
20 \$4,141, no expenses.

21 Is there someone from the firm in attendance?

22 MR. CORAN: Yes, Your Honor. Steven Coran here
23 for Lerman Senter.

24 THE COURT: Okay. It's a small amount in the
25 scheme of things, but I want to remind you to use project

1 billing categories as required by the Southern District
2 amended guidelines. Okay. I'm approving it.

3 MR. CORAN: Thank you.

4 THE COURT: All right. That concludes the fee
5 applications.

6 All right, Mr. Butler, are you running the show
7 today or one of your colleagues?

8 MR. BUTLER: Thank you, Your Honor. Nothing
9 further for the fee applications. I believe Mr. Stephens
10 will be addressing the discovery items.

11 THE COURT: Okay. Mr. Stephens? Sure.

12 MR. STEPHENS: Good afternoon, Your Honor. Eric
13 Stephens of Jones Day on behalf of the Debtor. Very
14 briefly, Your Honor.

15 You will recall that at the last conference and
16 hearing on this matter on November 28th, the Court directed
17 that there be an examination of the Everlaw database in
18 connection with breaches of protective order.

19 Following that directive, we have met and
20 conferred with the Committee and they have informed us that
21 they do not intend to comply with that directive even to
22 provide the Court with reports of Everlaw activity in-
23 camera. We would simply ask that they comply with the
24 Court's directive at the last hearing.

25 THE COURT: And I read -- Mr. Amala, I see him on

1 the screen. I read his declaration. I guess I saw it
2 today. I don't know if it was filed today. Do you have
3 more issues with Mr. Amala?

4 MR. STEPHENS: I think, Your Honor, the
5 declaration itself doesn't address the conduct that we
6 raised with him. It doesn't mention state court litigation
7 or the subpoena.

8 THE COURT: Sure it does.

9 MR. STEPHENS: I didn't see references to the
10 state court subpoena or state court litigation in the
11 declaration. But we are not seeking any amended
12 declaration.

13 THE COURT: Okay. Mr. Amala, do you want to be
14 heard?

15 MR. AMALA: I don't, Your Honor, other than I
16 would be there in-person, Your Honor, if this was filed on
17 Friday. So apologies I am not there in-person. And I also
18 don't know if I look as weird on your screen as I look on
19 mine. I don't know why that's happening. But anyways, I
20 apologize I'm not there in person, Your Honor, even though I
21 don't have anything to offer. I would have been there in-
22 person. Thank you.

23 THE COURT: Anything you want to add to what's in
24 your declaration?

25 MR. AMALA: I don't, Your Honor.

1 THE COURT: Okay. Does somebody from the
2 committee want to address the issue about providing the logs
3 for in-camera review?

4 MR. STANG: Thank you, Your Honor. James Stang,
5 Pachulski Stang Ziehl & Jones for the Committee.

6 Your Honor, at the hearing, we were caught --
7 caught is not the right word. We didn't expect that
8 discussion regarding Everlaw. And the comments that we
9 made, I hope you'll consider that it was kind of on the fly.
10 But we went back and thought about and studied what rights
11 people had under the confidentiality agreement, which is at
12 Docket Number 320.

13 And reading that carefully, Paragraph 6 and
14 Paragraph 10 of the confidentiality order provide for what
15 the Debtor is allowed to see in the context of the Everlaw
16 reports and what the remedies are if there has been an
17 impermissible use of the information. And specifically
18 Paragraph 6 of the order says that the Diocese -- that any
19 information that is conveyed to the Diocese should not track
20 or record the access of confidential information or
21 otherwise notify the Debtor or any other party that a
22 recipient has accessed confidential information from the
23 Everlaw format. It doesn't say Everlaw format, it says from
24 such format.

25 And then Paragraph 10 spells out what the remedy

1 is, which is that if there's a use that was not permitted or
2 not contemplated, that the Committee will assist the Diocese
3 in remedying such use or disclosure, which we think has been
4 addressed as to Mr. Amala.

5 We don't believe that the reports that the Debtor
6 has asked for are permissible under the order. Because what
7 they're looking for, without any even smoke, is to find out
8 if state court counsel has violated the terms of the
9 confidentiality agreement.

10 THE COURT: I didn't see this in any writing that
11 you filed with the Court to explain why you say they're not
12 supposed to be able to -- did you?

13 MR. STANG: No, Your Honor.

14 THE COURT: That's the usual way one responds, is
15 by -- it could have been a very short pleading that just
16 recited -- I would have gone back and I would have looked --
17 confirmed that the confidentiality order has the language
18 you've read to me.

19 MR. STANG: Your Honor, we -- if you want us to,
20 we will do that.

21 THE COURT: I want this to go away.

22 MR. STANG: I want it to go away too. Because,
23 frankly, I don't know if there's any there there, and the
24 Debtor has not shown us if there's any there there except
25 for Mr. Amala, who has made the offers he has made to you in

1 his declaration.

2 THE COURT: Let me ask this. Did you call Mr.
3 Stephens and say here's the language in the confidentiality
4 order, we don't believe you are entitled to receive it under
5 these circumstances. Did you do that?

6 MR. STANG: Your Honor, I'm going to have to turn
7 to -- I personally did not.

8 THE COURT: Did anybody?

9 MR. STANG: I do not know that Ms. Dine or Ms.
10 Michael did that.

11 MS. DINE: Your Honor, Karen Dine, Pachulski Stang
12 Ziehl & Jones. We did send a note. Mr. Stephens I believe
13 attached it to the letter in which we explained why we did
14 not think that doing the Everlaw searches was a reasonable
15 request. I don't know that we cite it in there, that
16 paragraph. And I know we mentioned it this morning when we
17 had a meet and confer on the next conference issue with Mr.
18 Stephens. But I don't think in our response to them to the
19 Debtor to let them know that we did not think that the
20 searches were appropriate, that we specifically referenced
21 that portion of the confidentiality agreement. But I should
22 say we did raise it with them, and as you heard, they
23 believe that we should go forward. And they were
24 considering making a motion for a protective order, but they
25 asked for this conference.

1 MR. STANG: Your Honor, to be frank, one of our
2 colleagues went back over the last couple of days and really
3 reread the confidentiality order and saw the two provisions
4 that I quoted to you. But we did tell the Debtor that we
5 thought that the disclosures they wanted would violate work
6 product privilege and potentially the attorney-client
7 privilege. That was communicated to them. But this part
8 about the two provisions is something that one of my
9 colleagues -- who was involved with the preliminary
10 injunction hearing just as an aside -- went back and really
11 read it. And she said, look, there are these two provisions
12 in here. And so we had not raised it with them before.

13 THE COURT: Okay.

14 MR. STANG: But I guess, Your Honor, having been
15 through my share of did you violate court order proceedings
16 and especially regarding confidential information, Mr. Amala
17 has taken responsibility for what he did. He has been very
18 clear in his declaration that he has no knowledge of other
19 state court counsel doing this. I have -- we have no
20 knowledge that state court counsel misused the information.

21 THE COURT: We're not going off on a detour
22 (indiscernible).

23 MR. STANG: I understand. And if the Debtor --
24 you know what? I'm going to just leave it at that.

25 THE COURT: Leave it at that. Mr. Stephens?

1 MR. STEPHENS: Just very briefly, Your Honor.

2 The first time that the Committee raised Paragraph
3 6 of the protective order was in a meet and confer with me
4 this morning. I think it's very clear when you read that
5 paragraph, it talks about the mechanism in which the Debtor
6 will produce and provide the documents. And it was that we
7 could not set up a database that allowed us to snoop on them
8 as they reviewed the documents. It does not say that in the
9 event that there are violations of the protective order --

10 THE COURT: All right. That's enough. I'm
11 satisfied with Mr. Amala's declaration and his presentation
12 at the last hearing. This matter is closed.

13 MR. STEPHENS: Thank you, Your Honor.

14 THE COURT: What's the discovery issue that you
15 wanted to raise?

16 MS. DINE: Your Honor, Karen Dine, Pachulski Stang
17 Ziehl & Jones, on behalf of the Committee.

18 As mentioned in the letter requesting the
19 conference to Your Honor, we had learned last Friday that in
20 state court, which we had been understood to say that the
21 debtor had produced new what we'll call CVA claim documents.
22 And naturally given that those were documents to be produced
23 to the Committee in this proceeding, we were concerned about
24 the discovery of new information.

25 Since submitting that letter, we did have a meet

1 and confer with Mr. Stephens and Mr. Butler from Jones Day
2 and they explained what the issue was. It has to do with
3 documents that were provided in response to the original
4 request in the bankruptcy case that were actually provide in
5 a non-redacted form as oppose to the redacted. And what
6 they were referring to in the court proceeding were
7 materials that were now newly had to be redacted and not new
8 what we'll call CVA claim documents.

9 Mr. Stephens also explained to us what situations
10 might occur in terms of whether certain John Does might be
11 identified, which would lead to the discovery of new CVA
12 claim documents. We had a very productive discussion about
13 the Debtor will share with us the information they are
14 producing in the state courts so that we can continue to
15 keep an eye on this issue from our perspective. And they
16 will also be providing us with the Bates numbers for the
17 documents that were produced only in the unredacted form as
18 opposed to a redacted form. So we think that, at least for
19 now, that that resolve the issue. And we appreciate Your
20 Honor setting it for conference, but we appreciate the
21 Debtor making time in advance of this hearing so we could
22 meet and confer on the issue.

23 Your Honor, if I may?

24 THE COURT: Go ahead, Ms. Dine.

25 MS. DINE: I promised Mr. Stephens that I would

1 actually also add that they have made clear to us that they
2 have not at this point found any new CVA documents, and
3 that's their position.

4 THE COURT: Okay. Mr. Stephens, anything you
5 wanted to...

6 MR. STEPHENS: No thank you, Your Honor.

7 THE COURT: Let's move on on the agenda then, on
8 to contested matters. Committee's motion to proceed with
9 certain state court actions and temporarily suspend the
10 Chapter 11 case.

11 MR. STANG: Good afternoon. Pachulski Stang Ziehl
12 & Jones for the Committee.

13 Your Honor, the Committee filed the motion for two
14 purposes. One was that we hoped -- we hoped that the test
15 cases can serve to breach an impasse that is between the
16 committee and state court counsel on the one hand and the
17 Debtors, the Debtor's affiliates, and perhaps as importantly
18 or maybe more importantly, the insurers.

19 You have time and time again urged all of us to
20 consider alternatives to dismissal. You've been very
21 proactive that way. And we appreciated that, to hear your
22 thoughts about how perhaps this could lead to a consensual
23 plan.

24 THE COURT: One thing that I never said was pick
25 your strongest cases, and those are the ones that ought to

1 be tried.

2 MR. STANG: In fact, I think you told us that we
3 weren't going to get to do that. Right?

4 THE COURT: Of course your motion omitted that.
5 It just said we think you ought to pick our strongest cases.
6 They need to get the message.

7 MR. STANG: We did say that. But on two
8 occasions, both before we identified the cases, we invited
9 the diocese to tell us what cases it would like to have as
10 test cases. And the answer was no, because they stand on
11 the position that they will only agree to test cases after
12 confirmation of a plan. Essentially only test cases for the
13 carriers. But not as to them because they'll have their
14 confirmation order. And not as to their affiliates because
15 they will have whatever releases would be in the plan.

16 So, no, you didn't tell us that you would just
17 sign off on what we wanted. But I will tell you in a few
18 moments why we picked those three cases. It might be of
19 interest to you.

20 So at the October 23rd hearing when you suggested
21 test cases, we listened. And we prepared the motion on the
22 basis that, well, maybe Judge Glenn has got an idea that for
23 all of the collective wisdom on this side of the podium, you
24 know, we didn't present yet. And so that's why we filed the
25 motion.

1 So on two occasions we asked the Debtor to
2 collaborate with us and have them pick the cases they want.
3 The first time before we identified the cases they said no.
4 And then after we identified the cases, they said no again.
5 Their no is evidenced by a plan that has to the best of our
6 knowledge absolutely no support at the state court counsel
7 level. And without the support of the state court counsel -
8 - and we heard this maybe ad nauseum in the motion to
9 dismiss -- they are never going to hit the 75 percent that
10 they need. And for all we know, the percentage may be
11 greater. Even under Purdue, it might be greater. Because
12 the 75 percent was the bare minimum. And there may be
13 circumstances where it should even be higher. But even at
14 75 percent, they're not going to make it with their plan.

15 So they have taken the position of no, we are
16 simply not going to discuss test cases with you. Not here
17 are a couple that we think evidence the weaknesses of the
18 cases and we have to then struggle with whether we would
19 tolerate that.

20 THE COURT: Let me ask you a question. I
21 recognize you're not state court counsel. But are there any
22 more developments to report before Judge Steinman, who has
23 indicated his desire to go ahead with -- is it four trials?

24 MR. STANG: Your Honor, I don't attend his status
25 conferences. My understanding is he is still pursuing and

1 pressuring people to move forward quickly with trials. I
2 know Mr. Stephens and me spoke this morning about some of
3 the things that he was doing -- he meaning Justice Steinman
4 -- regarding case management orders or form, discovery
5 objections and that sort of thing.

6 But in terms of identifying additional cases, I
7 don't know if other state court counsel are still on the
8 phone. By the way, Mr. Amala has dropped out of that
9 process because he has an Arrowood --

10 THE COURT: He has Arrowood cases.

11 MR. STANG: But if Mr. Stoneking is on, and I saw
12 Mr. Anderson appear, he might be able to give you a better
13 idea of what's actually going on, wherever over there is, in
14 the other courthouse.

15 THE COURT: I didn't contemplate these trials were
16 going to occur in federal court, they were going to occur in
17 state court. And Justice Steinman -- I reported I have not
18 spoken to him since the last hearing. Whatever
19 conversations I've had with Justice Steinman I have reported
20 on the record. But he's going to be the one to agree, okay,
21 those are the four or the six cases that we'll try. Not me.
22 I've tried to provide some general guidance and thoughts. I
23 mean, I thought that the opposition that Jones Day filed
24 missed the mark in a lot of respects. The notion that
25 personal injury cases don't get tried as bellwether trials

1 is not true. They cite General Motors. Judge Furman tried
2 a series of personal injury cases. Sure, there are
3 different priests who are alleged to have committed the
4 abuse, but the basic issue is pick a group of cases of the
5 victims and try those. Some strong cases, some not-so-
6 strong. (indiscernible) be involved and let Justice
7 Steinman decide, okay, those are the ones we'll try. All
8 right. But they're not going to be tried in my court.

9 I know this is not the disclosure statement
10 hearing. I've already spoken -- I've now read the
11 disclosure statement front to back. This is not a
12 disclosure statement hearing. I don't know whether the
13 Debtor plans to file an amended disclosure statement before
14 January -- what is it, 14th or 16th?

15 MR. STANG: 19th. 16th or 19th.

16 THE COURT: It's one of those dates. Yeah.

17 Doesn't disclose anything about the finances of
18 the parishes. What it says is we have given the Committee
19 information under a protective order. If they want to stand
20 on the disclosure statement, we'll go forward on -- they'd
21 better not file something three days before the hearing and
22 expect that the hearing is going forward.

23 They put a toggle in their plan, but they haven't
24 said what happens if Judge Glenn denies the motion to
25 approve the disclosure statement. Okay.

1 Look, I tried to think -- and you all are better
2 at doing this than I am I'm sure -- are there ways to sort
3 of break the ice to move this case forward that has any hope
4 of moving forward. I came up with the test case, bellwether
5 case approach. Get some data points for what these cases
6 are -- you know, what juries are going to value these cases.

7 I could certainly -- nothing in the -- the
8 disclosure statement gives the aggregate number of abuse
9 claims that have been filed. It gives the number when the
10 Court has sustained objections without leave to amend. It's
11 giving some projections. And again, you know, I looked at
12 it this morning. I'm just pulling it out of my head. You
13 know, whether it's going to be 500 or 450 claims that they
14 think are viable and they think they're going to confirm a
15 plan that only gives survivors \$100,000 and rights to
16 insurance. Without saying how many claims -- 135 parishes
17 and other related parties.

18 You've all told me in the past there are some
19 parishes with a lot of claims and some with none or a few.
20 If I were a state court plaintiff with no issues about
21 notice or anything and it was against a parish that only had
22 two or three claims and assets worth \$10 million, \$20
23 million, I could understand they would be leery about voting
24 in favor of a plan.

25 The disclosure statement suggests \$400,000 average

1 per claimant plus insurance.

2 Is it enough information for a survivor to decide
3 whether to vote in favor of the plan when they have no idea
4 how many claims against the priest or the parish, where
5 their claim lies, and what are the assets in that parish.
6 I'm sure I will hear this when I get to the disclosure
7 statement hearing. I'm not deciding it now. I have
8 questions about it. Okay?

9 They have a nice little picture chart and colors
10 with -- this was greater recovery than most of the diocese
11 cases that have been resolved before. You know, but Justice
12 Steinman tried six cases and three of them resulted in \$10
13 million verdicts and three of them -- you know, two of them
14 washed out completely and one miniscule damages. You know,
15 I mean, sure, creditors would have to think about am I
16 better off with something in hand. And they'll -- you know,
17 if the disclosure statement gets approved, if it goes out
18 for a vote, the creditors will decide. But the disclosure
19 statement is going to have to have adequate information.
20 And I'm sure the Jones Day lawyers will do their best to
21 persuade me that the four corners of that disclosure
22 statement have adequate information. I have my doubts,
23 let's put it that way. I expressed that before. I thought
24 before I got on the bench today, I would make sure I had
25 read it cover to cover.

1 MR. STANG: Your Honor, we also, since I know you
2 read everything, attached to Ms. Dine's declaration our
3 initial laundry list of issues. But I will add that when
4 that state court lawyer is advising a client other than a
5 committee member and one who is not on Judge Steinman's
6 released claim list -- because especially with Arrowood now
7 so many of them have gone away -- they have no idea what's
8 in the CVA files. There are state court counsel that
9 haven't signed the agreement that gives them access to the
10 Everlaw. But they have no idea. There is a universe of
11 claimants who will have no idea what the CVA files that have
12 been produced says about their claim, including notice
13 issues. Not a word.

14 And so as you know from -- our papers contain Ms.
15 Michaels' letter to the Debtor asking them to eliminate the
16 confidentiality designation for all the CVA documents, and
17 we have been told no.

18 We have to then move to -- I'll ask you -- I'll
19 ask the Debtor again, will you remove the confidentiality
20 designation from the CVA documents so that all survivors can
21 see the files that pertain to their case. Because we're
22 going to file a motion that -- I think we're going to file a
23 motion that does that. Because they said no to our request
24 as provided for in the various agreements and orders they
25 have regarding CVA access.

1 So it's one thing to know about the parishes'
2 assets. That's important. And you said very clearly last
3 time without that by a parish-by-parish basis, you're not
4 approving the disclosure statement.

5 But I would add that people are also in the blind
6 about what the diocese has. And even --

7 THE COURT: Maybe I can be persuaded that I don't
8 need to know how many CVA claims against each parish or
9 diocese-related party. It seems important to me, but maybe
10 I'll be persuaded I don't need that. And not saying there
11 has to be appraisals, but something that shows what are the
12 assets of the parish or diocese-related party. So creditors
13 could make an informed assessment whether to vote in favor
14 of the plan. It doesn't get to a vote unless I am satisfied
15 that the disclosure statement provides adequate information.
16 The purpose of adequate information is to inform the
17 creditors and allow them to make an intelligent choice as to
18 whether to vote in favor of a plan. And I'm missing, you
19 know, half of the standards that the cases have set. You
20 know, that's the gist of it.

21 MR. STANG: We'll have our formal objections. But
22 in addition to what was said in the attachment to Ms. Dine's
23 declaration, which we forwarded to the Debtor very promptly.
24 There is this issue that's going to come up before you
25 regarding whether the survivors should be allowed access to

1 information regarding what the Diocese knows about their
2 cases. And what's going on in Judge Steinman's court room
3 in part is that subpoenas are being served on the Debtor as
4 a non-party. It's possible that if you grant these three
5 test cases -- and welcome to -- we've invited them twice.
6 I'll invite them a third time. Please tell us what cases
7 you want to have as test cases. But maybe those will
8 overlap. Maybe bringing -- the Debtor is named in one of
9 the lawsuits. High schools which -- and you saw some
10 correspondence back and forth about whether the actions
11 against the high schools are stayed or not. Maybe we will
12 get into that today.

13 There's one involving ecclesia that we've agreed
14 vis-à-vis the preliminary injunction should not have been on
15 the flight list. It should be back on the no-fly list. But
16 now we're asking you to give relief from the stay as to it.

17 But those survivors should be able to find out how
18 strong their cases are or weak their cases are by seeing the
19 CVA documents. Like I said, there are hundreds and hundreds
20 of people who have no access to those documents today. And
21 whether or not their counsel is signed in Everlaw approval
22 document, access document, or even if they have, if it's
23 limited --

24 THE COURT: And let me ask you this. I'm
25 obviously not deciding it today. You've met and conferred

1 with the Debtor about the relief you suggest that you be
2 granted?

3 MR. STANG: We sent them a latter asking them.
4 They told us no.

5 THE COURT: Make a motion. File your opposition.

6 MR. STANG: So, Your Honor, I'll try to cut to the
7 chase here.

8 THE COURT: The motion that you made is denied.
9 Because making a motion is not an opportunity to negotiate
10 with me about who should pick the cases, weak cases, strong
11 cases. You filed a motion and you said let us pick the
12 strongest cases. That's not how it works. Okay? That's
13 not what the purpose of bellwether trials are, test cases.
14 It's to set the data points so that potentially all -- the
15 plaintiffs and defendants can all get a sense of this is
16 kind of the -- here's a selection of cases, this is the
17 range of outcomes in those, and it should guide the
18 discussions and negotiations.

19 And, you know, in GM, it served exactly that
20 purpose. Judge Furman tried a bunch of bellwether trials.
21 Some of them settled before they actually were tried. And
22 basically all of them settled.

23 MR. STANG: Your Honor, I appreciate that
24 bellwether is in the context of sheep, so I am mixing my
25 analogies. But the horse won't eve approach the water.

1 We've asked them twice. They have -- Ms. Ball could not
2 have been clearer with me --

3 THE COURT: So let the state court counsel tell
4 Justice Steinman these are the cases that already tried. If
5 they say, you know, we don't think there should be any more
6 or -- fine.

7 MR. STANG: But, Your Honor, those cases -- and
8 we made the decision on preliminary injunction opposition as
9 to which cases we would ask to -- which cases the opposition
10 would address and which ones it didn't.

11 But having the empty chair of the diocese in Judge
12 Steinman's courtroom is not as helpful -- it would be much
13 more helpful to have them there.

14 THE COURT: You could have moved to lift the stay.

15 MR. STANG: And how do I have a conversation about
16 data points with someone who just keeps on saying no to me.
17 And so you know what? I would have liked to have done it
18 the way you suggested. But when were told no the first --
19 when Ms. Ball stands up here and says only if there's a
20 confirmed plan, which means only as to the carriers and we
21 get told no twice, what are we supposed to do?

22 So if they want to come up and tell you the three
23 cases that they think are going have state court counsel
24 strike out, so be it. But they won't talk to us about this.

25 So I'm not -- I don't know -- we didn't know what

1 to do except say these are our three.

2 THE COURT: So I've lost count of the number of
3 cases that the district court and Eastern District -- it's
4 like eight or nine judges now have remanded to state court.

5 MR. STANG: Well over half. And some are just
6 sitting waiting -- they're waiting for a decision.

7 THE COURT: Are they all Arrowood cases or are
8 they...

9 MR. STANG: No, no. We also have the 157 -- the
10 something motion in front of the Southern District of New
11 York where they're trying to get him back that way. And so
12 it's kind of a two-pronged attack to make sure that
13 (indiscernible) removal and then the 157 motion --

14 THE COURT: And anything happen in that?

15 MR. STANG: She withdrew the reference without
16 giving us an opportunity to be heard. We briefed that
17 issue, and she's sitting on a ruling regarding whether the
18 matter should return. But Ms. Dine is standing, so...

19 MS. DINE: Your Honor, Karen Dine, Pachulski Stang
20 Ziehl & Jones on behalf of the Committee.

21 My understanding is there are about 40 cases
22 currently pending before Judge Steinman.

23 THE COURT: Non-Arrowood cases?

24 MS. DINE: Yes. That are active and ongoing is
25 what I meant to say.

1 THE COURT: And none of those include the Debtor
2 as a defendant. Because when you move -- when you --

3 MR. STANG: Your Honor, there are two high school
4 cases that --

5 MS. DINE: Actually, there's -- sorry.

6 MR. STANG: I'm sorry. I will yield to Ms. Dine.

7 MS. DINE: Your Honor, there are a number of
8 cases. We know of at least two where the Debtor has taken
9 the position that those were -- that those are not
10 separately incorporated and basically doing business as.
11 And so the diocese is a defendant in those cases. And I
12 believe that they have identified several others. And as
13 you may have seen from the correspondence, they actually
14 recently requested that we reaffirm the stay with respect to
15 those cases. And what we pointed out to Your Honor is at
16 least with respect to those two, the request to stay the
17 cases have actually been made by the plaintiffs in those
18 cases about six months ago. And the debtor said, well, the
19 order says they are not stayed, that Your Honor's order on
20 the preliminary injunction says they are not stayed. So
21 those have gone forward. So our position is that all of
22 those allegedly DBA cases should continue to go forward,
23 although we did agree that the -- and Your Honor, I believe
24 a notice of presentment was filed today -- that there were
25 places that implicate the ecclesia insurance where we did

1 agree that those could be restated effectively. But that is
2 where we are. And as Mr. Stang is saying, while those 40
3 cases are going forward, while there is some number that do
4 include the diocese -- and naturally that's the purpose of
5 the test case motion was for relief from the stay for others
6 to go forward against the Diocese.

7 MR. STANG: Your Honor, one of our test cases
8 involves this DBA. It was a high school that I think
9 eventually ended up with the Department of Education. But
10 before that happened, it was an unincorporated entity. It
11 was Proof of Claim 960. And it has LMI, interstate
12 insurance. And when you add up all the available insurance,
13 we believe it's \$149 million per occurrence, including
14 primary and aggregate. There is an SIR on that one of
15 \$200,000.

16 If you counted each act of abuse separately --
17 there's precedent for that -- the allegations are 8 to 13
18 instances of abuse. So you can see these insurance numbers
19 really start to mount up.

20 And initially Mr. Lee James wrote to the Debtor --
21 I forget which counsel -- and said hey, you know, these seem
22 to be -- you're taking the position that -- are you taking
23 the position these are stayed. I think Mr. James got the
24 notice of deposition.

25 And they wrote back and said no, no, no, they're

1 not stayed because the preliminary injunction order said
2 these aren't stayed. And there was a schedule and this
3 case, Mr. James' case was on the schedule. Then --

4 THE COURT: You all gave me a list of the cases.
5 I mean, I didn't --

6 MR. STANG: Absolutely. They then come back and
7 say no, they are not stayed. And now they're saying they
8 are stayed, they should have been stayed. Inadvertent? I
9 don't know. They should be stayed.

10 So after six months of Mr. James and other people
11 who have cases against those DBAs are working in Justice
12 Steinman's courthouse and moving the cases along. Now all
13 of the sudden we think they're stayed when in correspondence
14 what you have, Mr. James was told they were not stayed.

15 So we did agree to the ecclesia. They got moved
16 over to the no-fly list. But that's one of the test cases
17 to bring the Debtor in -- I mean, the high schools were
18 named. So the Debtor is there on that one.

19 The second proof of claim -- the second test case
20 has coverage -- occurrence coverage limits of \$359 million.
21 The SIR on that is \$600,000. This is against Father Soave,
22 who was one of the most notorious of the abusers. Numerous
23 times are alleged in the abuse documents.

24 So there are two LMI interstate cases. One names
25 the debtor by name. The other names the two high schools or

1 a high school, which they'll tell you whether it's
2 (indiscernible) or not, because I can't keep track of what
3 their position is as of today. And then the third one is an
4 ecclesia case, which we agreed should be off Justice
5 Steinman's list and now we're asking you to relieve it.
6 There the coverages are much less. But it really highlights
7 why the Debtor and the affiliates need to step up and really
8 cinch their belts and do more. There the coverage is
9 \$750,000 with an SIR of 250. And there were 30 instances of
10 abuse during the course of -- according to the proof of
11 claim. So now the defense costs in that case do reduce the
12 750. So those are the three cases. We had Arrowood cases,
13 but they had to go away.

14 So like I said, Your Honor, I can't make the horse
15 drink the water. I know you don't like what we did. But
16 what was I supposed to do?

17 THE COURT: So the record is clear, I haven't
18 heard the other side. I don't need to. Your motion was
19 filed as ECF 2767. You asked for too much. Your motion is
20 denied. I'm not going to get into negotiating what the
21 scope of the relief should be. I still think...

22 For the -- I'm just going to use this -- I'm going
23 to use 500 claimants just a number. You know, they went
24 through the math, subtracted out the number where I had
25 expunged the claims without leave. I still think if the

1 case gets dismissed, it's going to be a really interesting
2 issue -- maybe even not so interesting -- in state court
3 whether my rulings applying federal pleading standards has
4 any preclusive effect when each of those rulings acknowledge
5 the state court uses a different pleading standard.

6 I can just say if I was a state court judge, I'd
7 say, oh, that's nice. But that's not state law. We're back
8 in state court. You can all argue about it if it gets back
9 there. Okay.

10 MR. STANG: And certainly not as to the parishes
11 or anybody who is not a debtor.

12 THE COURT: Mr. Stang, if I were one of the many
13 claimants, I would have very mixed feelings if three of them
14 were tried and they resulted in multimillion dollar verdicts
15 and they raced to collect. It's great if you were a
16 claimant who wasn't going to get their case tried for a
17 couple of years whether there's anything left to collect.

18 So I've thought all along and I've said it, I
19 think the claimants are much better off with a confirmed
20 plan. It may be they don't like the one that they've
21 proposed, but after the first few claimants hit home runs at
22 trial, the rest of the claimants are going to think is there
23 going to be anything left by the time I get to try a case?

24 MR. STANG: Your Honor, we filed the motion to
25 dismiss out of frustration. We had hoped that the Debtor

1 and the affiliates and the carriers would see the wisdom of
2 try to engage with us. On October -- November 1st -- I
3 think it was the 1st -- I'm sorry. In connection with the
4 dismissal motion, you talked about a consensual plan.

5 Now, there have been three cases where plans have
6 been filed by committees. Harrisburg and Guam where the
7 disclosure statements weren't even approved, and consensual
8 plans were reached in each.

9 In the Archdiocese of St. Paul Minneapolis, plans
10 went out for vote. More than 90 percent of the survivors
11 voted against the Archdiocese plan and voted for the
12 survivor plan and vice versa. And Judge -- I think it's
13 Kressel -- did not approve either. And it went back and
14 they finally reached an agreement.

15 THE COURT: So will you finally reach an
16 agreement, please?

17 MR. STANG: Your Honor, if I could even know -- if
18 I could even know whether the \$200 million, which is their
19 headline number -- and I do mean headline in the pejorative
20 sense -- after all the deducts actually is a number that I
21 could even compute. But they have said -- and we wrote to
22 them and asked them in our objections to the disclosure
23 statement. We have yet to receive a response. When you say
24 it's 200 less all allowed administrative expenses, is there
25 anything left at all? I mean, the fees in this case -- you

1 hear reports they are \$80 million, \$100 million. They're a
2 lot. Is that coming out of the 200? Because that's what
3 your plan says. And what about all the other deducts. So
4 if I knew a number that I could actually put a pin on --

5 THE COURT: Stop with the -- it doesn't do any
6 good making this argument to me.

7 MR. STANG: Your Honor, I've made it to them. We
8 have not received a word in response to our disclosure --
9 our first stab at a disclosure statement list of objections.
10 Not a word.

11 THE COURT: Can I ask you a question? What do you
12 do -- because I know you're involved in cases in the Fifth
13 and Ninth Circuits.

14 MR. STANG: Yes. And we had some in the Tenth.

15 THE COURT: Where third-party releases are not
16 available.

17 MR. STANG: Right.

18 THE COURT: What do you do in those cases?

19 MR. STANG: We get everyone to sign off. You
20 don't get your money unless you sign a release. We have
21 never had an objection. I've had two cases in the Tenth
22 Circuit. The Fifth Circuit, Judge Grabel has still got that
23 pending. We had Spokane --

24 THE COURT: You know she is one of my former law
25 clerks.

1 MR. STANG: I know. Spokane. We cite to you all
2 the time. We had Spokane, Fairbanks, Jesuit. San Diego
3 dismissed voluntarily. Stockton. Not a single person held
4 back giving a release. Not one.

5 THE COURT: And what was the recovery per claimant
6 average in those cases? Yeah, well, you don't even talk
7 about that.

8 MR. STANG: It varied. And some of them overlap
9 because, for example, Spokane -- it was like a triangle.
10 Spokane, Fairbanks, and Jesuits were all Jesuit-type cases.
11 And some people collected from all three. So it's a little
12 hard to add up. But it was well north of the headline
13 number when you consider that some of these people had
14 claims against different entities because of the Jesuit
15 connection.

16 And I don't remember Gallup and -- before Judge
17 David Thuma, Gallup and Santa Fe. I don't remember the
18 numbers.

19 But, Your Honor, I've said it in pleadings, I've
20 said it to you. What got paid in another case is
21 irrelevant. It really is. The assets differ. The judge in
22 San Diego. We have a view of the Pacific when she was told
23 we were going to (indiscernible). The insurance programs
24 are different. And so I frankly think --

25 THE COURT: They're tossing in all the insurance.

1 MR. STANG: I'm sorry?

2 THE COURT: They want to toss in all the
3 insurance.

4 MR. STANG: Yeah. Thank you for Arrowood. Thank
5 you very much. That's a big headline number.

6 THE COURT: Well, that's -- you know, you take the
7 case as you find it.

8 MR. STANG: You're right. And don't tell
9 everybody you're going to make all this money when they know
10 full well that Arrowood is a very tough nut to crack. I've
11 got insurance counsel who can't wait to tell us why there
12 are coverage defenses and why they don't have to pay --

13 THE COURT: I'm sure you read the new case
14 yesterday.

15 MR. STANG: Yes, I did.

16 THE COURT: I have it sitting on my desk inside.

17 MR. STANG: Look at the LMI opposition that they
18 filed to the test case motion. We're not paying any defense
19 costs. We don't have to pay anything until it's all done.
20 This is what we are facing and why we think the test cases
21 are -- and I heard you. I know I'm not going to change your
22 mind as I'm arguing, at least I don't think I'm going to.

23 We keep on trying and we keep on getting told our
24 way or the highway. And I know what they're going to say to
25 you; let the creditors vote. And the answer is, you know

1 what? If you could even show me that you're making any
2 progress -- on two occasions this Debtor has tried to go
3 around the Committee to talk directly to the state court
4 counsel. And one time -- we cite it to you in our papers --
5 you said, really? You know, without the Committee? No case
6 has ever been confirmed without Committee support in the
7 cases that I've had or any of the ones that my competitors
8 have had. Not one.

9 And so they have -- they reached out a second time
10 recently to state court counsel again. This time at least
11 they copied me with their letter. I'm not aware of a single
12 law firm that has said we like your proposal. Not one. And
13 so -- and maybe they've got one, but they ain't getting the
14 75 percent. Because I know the state court counsel who are
15 on the committee, and you heard them testify. And this plan
16 is not all that much different except they put the toggle
17 on. It's really not that much different.

18 So I can't make heads or tails of their disclosure
19 statement, either. I can't tell who is going to get paid
20 the promised \$100,000 or who is not. Because if you're
21 litigating, you're a litigant-claimant, you don't get it.
22 Of course they get to decide who that is.

23 There's just -- when I reviewed the list of
24 objections today in preparation for the hearing, I go like,
25 wow, another page? Another page? There's quite a bit.

1 THE COURT: Let me hear from Ms. Ball.

2 MS. BALL: Thank you, Your Honor. And thank you
3 for denying the motion.

4 THE COURT: It may not stay that way. If it was a
5 real motion...

6 MS. BALL: We hear you, Your Honor. Just as we
7 heard you on all the points you raised again today. But now
8 that we know you are not suspending the case, is that a...

9 THE COURT: I am denying their motion.

10 MS. BALL: All right. Now that we know that --

11 THE COURT: But imposing a 50 percent holdback.

12 MS. BALL: I understand that. I think we'll work
13 that out on how the \$200 million is affected. But let me
14 start with three facts that we would like to share with you.

15 And they're not known, but every single issue you
16 raised today will be known on a public basis by this time
17 tomorrow.

18 THE COURT: You're waiting until tomorrow? Why
19 don't you --

20 MS. BALL: Well, if you're going to suspend the
21 case, Judge, why would we have filed it?

22 THE COURT: Because you had confidence in your
23 position.

24 MS. BALL: I do. Thank you. Thank you, Mr.
25 Geremia and Judge. But all those facts that you talked

1 about will be there.

2 But the second thing that I want to remind --

3 THE COURT: By the way, if I said test cases, it
4 wouldn't necessarily mean suspend the case while that goes
5 on. But that's a different issue.

6 MS. BALL: Okay. The second thing that I want to
7 draw your attention, we keep getting pillared for reaching
8 out to state court counsel. Your Honor, in this case, as
9 will be obvious from the exhibits we file tomorrow --

10 THE COURT: Are you filing an amended disclosure
11 statement tomorrow?

12 MS. BALL: That will follow with the trust
13 distribution procedures as well. We took -- and we thank --
14 actually, we thank Ms. Dine for her comments on the
15 disclosure statement and we are busily working on that.

16 But we met with at least 16 of the roughly 20
17 state court counsel in all of these cases. And we shared
18 with each one in detail the number of cases that they had
19 against each parish and what the competition of other cases
20 were in that parish.

21 THE COURT: Are you putting that in a disclosure
22 statement?

23 MS. BALL: Yes, we are. It's all going to be
24 there. Because we've already shared it. They all know it.

25 THE COURT: I wish you had shared it to me before

1 I spent the time going through every page.

2 MS. BALL: Well, now you deny the motion, that
3 will be there.

4 In addition to that, Your Honor, we met with
5 counsel. We asked them exactly the question you just asked,
6 which is what are you going to do. Your Honor saw from the
7 disclosure statement that we filed that there are 312 cases
8 against parishes that have three or more cases.

9 And so when we met with each of these counsel, we
10 asked them, what are you going to do? How can dismissal
11 help you at all? They said, well, we'll have insurance.
12 Given all the complications on foreclosing on churches and
13 schools, we'll still have the insurance. Which is what led
14 -- frankly, and I think it's a concession that the committee
15 made -- that they're looking for more money. It's all going
16 to come from three places, Judge. Co-defendants, which Mr.
17 Stang just spoke eloquently about with the Jesuits, they are
18 free to go after co-defendants here. Of course, including
19 the Jesuits, the Franciscans, the Marists. No one is
20 stopping that. That's free. Our claim doesn't even touch
21 that.

22 But beyond all that information and disclosure
23 that we have made already, the three places you get more
24 money are working with us to increase the borrowing against
25 Arrowood and line up against New York state with the benefit

1 of the decision Your Honor just recognized that we got out
2 of New York Supreme on Friday night against Chubb. Co-
3 defendants, if you want our help in trying to get them to
4 come in and put in more money, we're happy to do that. We
5 offered that. So insurance co-defendants and whatever we
6 can get on an Arrowood borrowing. They don't talk to us
7 about that. So this failure to communicate seems to
8 continue.

9 But in any event, our failure to communicate with
10 you, Your Honor, is clearly being remedied. By this time
11 tomorrow, they will have those exhibits. Shortly after that
12 --

13 THE COURT: As I said, I would have appreciated
14 reading it before I spent hours and hours...

15 MS. BALL: Well, it's not going to change that
16 much. But it will give you the facts behind what you
17 wanted.

18 I am sorry that Your Honor went through that. But
19 if we were -- as you know, we had homework to do, which we
20 did. And in the face of the motion to suspend, part of our
21 homework was, well, if that happens, you shouldn't do it.
22 But if you deny the motion, it will now be there. And my
23 apologies, Judge, that our homework, we got connected to
24 that consequence which you have now undone and that
25 information would clearly be there.

1 So, Your Honor, the other fact is it is also
2 unknown to Mr. Stang, through no fault of his own, but I can
3 tell you we are getting responses from state court counsel
4 who are waking up to the reality of what dismissal will mean
5 to them and their clients. And I think in some respects I
6 don't know how two-thirds of the claimants in this case --
7 well, a little bit less -- almost 65 percent affected by
8 Arrowood, which means that they can't even try their cases,
9 at least for six months. A lot of people think a lot
10 longer. It may have caused people to seriously rethink.

11 But we are standing, there is no more from the
12 parishioners and there is no more from the diocese. That's
13 where we are. The other three sources remain; co-
14 defendants, insurance, and getting in the boat and rowing
15 with this.

16 THE COURT: You say no more from the parishes. It
17 will be interesting to see what happens if some of the
18 plaintiffs' lawyers hit it big against the parishes. Are
19 they really going to be saying no more?

20 MS. BALL: Well, Your Honor, aren't you assuming
21 that a parish would withstand the verdict?

22 THE COURT: I'm sorry?

23 MS. BALL: Aren't you assuming that a parish would
24 withstand the verdict?

25 THE COURT: They'll get every penny they can out

1 of a parish.

2 MS. BALL: How?

3 THE COURT: Well, we'll see I guess.

4 MS. BALL: We'll see.

5 THE COURT: Let me ask you a couple of questions.

6 You may know the answers to these. So there are how many
7 cases in state court that have been filed? Two-hundred-
8 and...

9 MS. BALL: You mean overall? No, Your Honor.
10 Including cases against the Diocese -- Mr. Stephens, correct
11 me -- but it's over 400.

12 MR. STEPHENS: Yes. It's approximately 450 in
13 total, Your Honor. Roughly half of those name the Diocese
14 and are subject to the automatic stay. And the other
15 roughly 225 were the subject of the PI hearing.

16 THE COURT: Here's my question. I don't know,
17 maybe there isn't anybody in this category. Are there
18 people who filed claims in this case who did not file state
19 court actions?

20 MS. BALL: Yes.

21 THE COURT: And what happens if the case is
22 dismissed because the window closed on CVA? What happens to
23 them?

24 MS. BALL: Well, that's a very good question, Your
25 Honor. We have asked the Committee if they've considered

1 that. I don't know. But maybe they have an answer.

2 THE COURT: So you don't have an answer.

3 MS. BALL: I don't have an answer, Your Honor.

4 THE COURT: Your position is what?

5 MS. BALL: But we have pointed out to them the
6 number of pro se claimants, mostly pro se. Some with
7 lawyers as well. And we've met with individual state court
8 counsel --

9 THE COURT: How many --

10 MS. BALL: This -- we asked that.

11 THE COURT: How many people does that involve?
12 How many people filed claims in this case who do not have a
13 pending state court action?

14 MS. BALL: I am hearing directionally, Your Honor,
15 the number is somewhere in the area of 50.

16 THE COURT: In what?

17 MS. BALL: I think it's in the area of 50.

18 THE COURT: Okay.

19 MS. BALL: Fifty. But we can't -- we obviously
20 can confirm that again with the Committee.

21 THE COURT: I spent a little bit of time thinking
22 about what happens if the case gets dismissed. What are the
23 consequences of it? How many people are there who filed
24 claims in this case but don't have pending state court
25 actions? The CVA window closed. I don't know whether there

1 is a state court doctrine that would allow them to file
2 lawsuits in state court. That was one area I thought about.

3 I also thought about what happens to the adversary
4 proceedings that have been filed here.

5 MS. BALL: Your Honor, only one remains unsettled.

6 THE COURT: That's the cemetery?

7 MS. BALL: Cemetery. And I think it will become
8 clear that we are working very hard on bringing a settlement
9 for that and have counted on it as we move forward towards a
10 plan.

11 THE COURT: What happens --

12 MS. BALL: It is dismissed --

13 THE COURT: What happens to the four district
14 court insurance coverage adversaries?

15 MS. BALL: I think if Your Honor looks at our
16 proposed order of dismissal that we attached to the motion
17 to approve our solicitation procedures, we provide that
18 those continue. Post-coverage will still be an issue.

19 THE COURT: Because I looked -- a complaint today,
20 and it alleged 1334 jurisdiction. I think there may be
21 diversity as to all of the insurers who are named, and it
22 doesn't assert diversity jurisdiction. But I did have a
23 question. What happens to those cases? Do they have to
24 start all over again? Maybe they start in New York Supreme
25 Court.

1 MS. BALL: I think, Your Honor, that would depend
2 on whether the insurers move to dismiss for a lack of
3 jurisdiction. And we don't think they will succeed. But
4 our order at least preserve those actions.

5 THE COURT: Well, your order can say whatever it
6 wants. It doesn't mean it's necessarily the order that gets
7 entered.

8 MS. BALL: I understand, Your Honor. But that's
9 our proposal.

10 THE COURT: I just don't know whether -- I tried
11 to think through what are the consequences. I thought about
12 insurance coverage claims, I've thought about proofs of
13 claim where there's no state court action that was filed.

14 MS. BALL: Proofs of claim in Delaware on
15 Arrowood. Pursuing the New York State Security Fund as the
16 only insured that has a massive claim worth fighting them
17 on.

18 THE COURT: All right. I don't know. This is not
19 the time for it.

20 MS. BALL: Your Honor, this is -- all I wanted to
21 do was clarify that all that information -- we heard you
22 will be available. We're aiming for this time tomorrow.
23 State court counsel are talking -- oh, by the way, Your
24 Honor, the reason why we were talking to them was so they
25 would be aware of this information. They weren't.

1 THE COURT: The only other point I would make on
2 it is as I understand it, the two mediators are willing to
3 resume.

4 MS. BALL: Well, let us think about that, Your
5 Honor. But I apologize for the length of what I said given
6 your action in denying the -- I just wanted to point out
7 those three sources, the ones that Mr. Stang identified in
8 California were made available here to the Claimants, co-
9 defendants. Have at it.

10 THE COURT: In denying Mr. Stang's motion, it is
11 in no way intended to preclude if Justice Steinman has a
12 proposal that he is going to make to counsel in the case and
13 they make another motion to lift the stay as to particular
14 actions to the extent there is a stay. What I ruled in
15 denying there motion is not at all intended to suggest that
16 such a motion wouldn't be appropriately considered and ruled
17 on.

18 MS. BALL: I understand that, Your Honor. And
19 since we've heard -- we understand Judge Steinman has
20 control over his -- I thought it's roughly 50 cases.
21 Correct? And perhaps you can address the discovery issue.

22 MR. GEREMIA: There are roughly 44 --

23 THE COURT: Identify yourself.

24 MR. GEREMIA: May it please the Court. Todd
25 Geremia from Jones day for the Debtor.

1 Your Honor, there are 44 cases being actively
2 litigated before Judge Steinman that involve parishes.
3 There are a separate group of six of those that are high
4 school cases.

5 As to the 44 cases -- and you heard Mr. Stang
6 talking about the fact that they want to proceed as against
7 parishes and proceed with respect to insurers -- there is
8 that whole universe of cases that is proceeding before Judge
9 Steinman.

10 THE COURT: None of those are Arrowood cases.

11 MR. GEREMIA: None of those are Arrowood cases.
12 Judge Steinman has directed that any case subjected to the
13 Arrowood stay will remain stayed unless and until a
14 plaintiff brings the issue before Judge Steinman to try to
15 get that case to resume.

16 THE COURT: Okay.

17 MR. GEREMIA: So those cases are proceeding. The
18 Diocese is providing non-party discovery with respect to the
19 parish cases. We are just now in the process of working out
20 a coordinated procedure at Judge Steinman's direction to
21 arrange for a uniform set of disclosures, a uniform
22 response, and a procedure to arrange for coordinated
23 depositions of diocesan personnel.

24 One of the many reasons -- there's no point in
25 piling on test cases on top of that. They've already got

1 all these cases being actively litigated.

2 THE COURT: Well, the test cases may be among
3 those. I don't know.

4 MR. GEREMIA: Yeah. In fact, state counsel
5 proposed four test cases to Judge Steinman from among that
6 universe.

7 THE COURT: And you're not -- I don't know, who is
8 representing the parishes in those cases?

9 MR. GEREMIA: Parish have separate counsel, Mr.
10 Davie and Charles Adams.

11 THE COURT: Did the parishes suggest that test
12 cases ought to include -- you know, if it's going to be
13 meaningful, it's going to be an array of cases, strong and
14 weak. Because otherwise it's a meaningless exercise.
15 Meaningless exercise for those who it payday. And I take it
16 you remain unwilling to confer with the Committee about
17 selection of any test cases.

18 MR. GEREMIA: We do, Your Honor. I mean, for some
19 of the reasons addressed in our papers, we don't think it's
20 appropriate in this context.

21 THE COURT: Well, I think your opposition, which I
22 read carefully and read some of the cases cited, is not
23 well-taken.

24 MR. GEREMIA: It's also going about it improperly.
25 You don't just leapfrog the whole process by plucking out

1 cases and saying we're going to --

2 THE COURT: No. You would meet and confer and you
3 would agree that we're each going to pick two, we're each
4 going to pick three. We think they should more or less be -
5 - you know, what the characteristics should be. That's what
6 happened in GM. Okay. There was an initial flurry of
7 activity as to what happened. But that's essentially what
8 happened. That's what -- that's what happens when
9 bellwether or test cases are suggested. There's a dialogue.
10 There is a selection. They're intended to be representative
11 in some fashion or another. But people engage in good faith
12 in discussions. They don't just say just say no. And
13 that's what your position is. So we'll deal with it
14 accordingly.

15 MR. GEREMIA: Yeah. And we don't think there's
16 ever been a case, abuse context, where this has been an
17 appropriate mechanism.

18 THE COURT: You know, if the case gets dismissed,
19 you're going to be in that context. You're going to be in
20 that context. And you're hanging on by a bare thread. If a
21 disclosure statement gets denied and the Committee -- I'm
22 not going to sua sponte rule. If the disclosure statement
23 gets denied and the Committee makes a motion to dismiss,
24 what I said in the last order I entered, I meant. Okay? It
25 seems obvious to me the committee didn't really mean it. I

1 questioned whether they really meant it then. But
2 subsequent history shows they didn't really mean it. But
3 there comes a point where they say we really mean it, Judge.
4 This has gone on too long. You know, we put off from the
5 docket for today the motions to remand to state court in New
6 York County. Those will come on for hearing.

7 MS. BALL: We are aware of that, Your Honor. I
8 rise only for two reasons. One, I am corrected by my
9 colleagues that the number of POCs without a CVA action is
10 150 of our remaining 500. So the issue is much larger than
11 I had initially thought. And of course we will share that
12 list with the committee if they don't already have it.

13 Your Honor, just food for thought. And this is
14 certainly not my area and certainly not Mr. Stang's area.
15 But to the extent that you draw a ring around cases you
16 think will make it to trial, haven't you already preselected
17 cases that aren't representative?

18 THE COURT: No, we haven't.

19 MS. BALL: If you just erase --

20 THE COURT: No, I'm sorry.

21 MS. BALL: If you just erase the notice issue,
22 Judge, if you erase it, what kind of test cases do you have?
23 You need pretrial procedure.

24 THE COURT: So tell Justice Steinman that you want
25 noticed cases.

1 MS. BALL: Guess what we are doing, Judge Glenn?
2 That is exactly what we are doing. Thank you.

3 THE COURT: And produce all of your files so that
4 everybody -- all other claimants can --

5 MS. BALL: Well, that is -- indeed, I didn't know
6 you wanted to hear about discovery. But that is indeed
7 pending in front of Judge Steinman.

8 THE COURT: I know. If you can't work it out and
9 it comes here, I will decide it.

10 MS. BALL: Well, Judge Steinman may decide it
11 when? This coming week?

12 THE COURT: I'll be very happy if he decides it.

13 MS. BALL: It's before him.

14 MR. GEREMIA: There is a process in place to
15 determine if the Diocese is going to be producing abuser-
16 specific files in each case and there will be a process
17 further to that for --

18 THE COURT: I would be much happier if he decides
19 it than I.

20 MR. GEREMIA: Yeah. It's underway in state court.

21 THE COURT: All right, Mr. Stang?

22 MR. STANG: Your Honor, my comment wasn't just
23 about those cases about Justice Steinman, it was
24 (indiscernible).

25 Just two comments.

1 THE COURT: Do you have a position on what about
2 those people that filed proofs of claim that haven't filed?

3 MR. STANG: Section 108. They have 30 days.

4 Your Honor, we are asking you to continue the
5 disclosure statement if in fact they file it tomorrow. I
6 wasn't quite sure I heard a commitment to that. It sounded
7 like we were close. But we need our full --

8 THE COURT: It sounds like they're filing exhibits
9 to the disclosure statement. I don't know whether they're
10 filing the disclosure -- a new disclosure statement.

11 MR. STANG: Given the holidays and our entitlement
12 to 28 days' notice, we would ask that the disclosure
13 statement hearing be vacated because we will not have the
14 full period of time. And you made a comment at the last
15 hearing about deadlines -- the effect of holidays. And we
16 should be given full time and not have to deal with the
17 Christmas --

18 THE COURT: You were the unreasonable one.

19 MR. STANG: Sorry?

20 THE COURT: You were the unreasonable one.

21 MR. STANG: No, they were.

22 THE COURT: Oh, were they?

23 MR. STANG: I think you blamed them. I think it
24 was shame on you. Right, right.

25 THE COURT: You're right. It was shame on them.

1 It was shame on the Debtor. I apologize, Mr. Stang.

2 MR. STANG: It's okay. There will be occasions,
3 I'm sure. We've already had them earlier today.

4 So we are asking to have that vacated.

5 THE COURT: I'll have to see what they file. Put
6 in a letter -- after you see it, you can -- don't file a
7 formal motion. File a letter request.

8 MR. STANG: Okay. Thank you.

9 THE COURT: First ask them and then --

10 MS. BALL: The 28 days to the 16th is from today.
11 So we may be behind, but not by much. And we would
12 anticipate --

13 THE COURT: You want Mr. Stang to work on New
14 Year's Eve on your papers.

15 MS. BALL: No. I will notice it tomorrow. And to
16 the extent --

17 THE COURT: You want me to work on New Year's Eve?

18 MS. BALL: No, I don't. I hope all of this will
19 be filed this week, Your Honor. That is our objective.

20 THE COURT: I'm leaving on Friday and coming back
21 on January 2nd.

22 MS. BALL: Well, do you want it or not?

23 THE COURT: And I wasn't planning on reading
24 several hundred pages disclosure statement --

25 MS. BALL: Well, you already read it. So

1 blackline should be very helpful.

2 THE COURT: Thank you very much.

3 MS. BALL: And the exhibits answer your questions.

4 THE COURT: Thank you very much.

5 MS. BALL: Well, Your Honor, time is money.

6 THE COURT: Please -- well...

7 MS. BALL: And you've just made that clear. And
8 we painfully understand it.

9 THE COURT: Maybe it should be a higher holdback.
10 I don't know. In deciding when I'm going to hear it, I will
11 primarily take account of my schedule and my law clerks'
12 schedules. Because I am not going to have us knock
13 ourselves out because you decided to file just before the
14 Christmas and New Year holiday. So we'll see. So talk to -
15 - let him see what you file. Talk to Mr. Stang as to
16 whether you can agree on an adjustment schedule. If not,
17 I'll see what happens when I see it.

18 MS. BALL: As you said, it will be up to Your
19 Honor in the end. And we can only recommend to you. Thank
20 you, Your Honor.

21 THE COURT: Mr. Stang is correct. It was one of
22 your colleagues that I got very upset about not respecting
23 professional courtesy with respect to scheduling. Take my -
24 -

25 MS. BALL: Your Honor --

1 THE COURT: Use some professional courtesy to me
2 as well. Okay?

3 MS. BALL: He was well-intentioned and motivated
4 by what he had read in Mr. Moore's declaration about the
5 longer it takes, the less money we have. Not to burden
6 anyone. But it's now the 16th. That's 28 days from today
7 or tomorrow depending on how you count. So we are doing
8 what we can.

9 And thank you, Your Honor. We did our homework,
10 we'll be ready.

11 THE COURT: I want to be clear; I don't want to
12 spend my holiday break reading your papers. Okay? That's -
13 - I won't say any more about it now. Okay. We are
14 adjourned.

15 (Whereupon these proceedings were concluded at
16 3:54 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: December 21, 2023

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EXHIBIT C

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 20-12345-mg

4 - - - - - x

5 In the Matter of:

6

7 THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 November 1, 2023

17 2:03 PM

18

19

20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

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1 HEARING re Hybrid Status Conference RE: Mediation.
2 (Doc # 2590)

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1 P R O C E E D I N G S

2 CLERK: All rise.

3 THE COURT: All right. Please be seated. All
4 right. Before we begin, I know, Ms. Dine, you had asked on
5 behalf of the Committee to postpone this hearing for today.
6 I wanted to move forward, and I'll explain why in a second.

7 So yesterday afternoon, my chambers received a
8 phone call from Justice Leonard Steinman. I returned the
9 call. I spoke to him for 10 to 15 minutes. I told Justice
10 Steinman that at the last hearing in this case, I had raised
11 questions about the possibility of test cases being selected
12 by the parties and expedited for trial in the state court,
13 assuming that the bankruptcy case isn't dismissed.
14 Obviously if the case is dismissed, state court will deal
15 with them as it wishes.

16 In substance, Justice Steinman said he was open to
17 doing so and would expedite such cases. Obviously we didn't
18 go beyond that. I made clear that the issue arose solely
19 from my questions that I asked during the hearing and not
20 from any suggestions by the parties.

21 My conversation with Justice Steinman, however,
22 raised some questions that I wanted to raise today so that I
23 have a better understanding of what happens if cases proceed
24 to trial in state court. And my questions are specifically
25 with respect to comparative fault or liability.

1 Specifically does CPLR Section 1601 apply with respect to
2 noneconomic loss in sex abuse cases that, for example, name
3 a priest, a parish, and a diocese as defendants. I
4 basically was trying to think through what's the potential
5 exposure of the diocese, of a parish, of a priest. And I
6 understand that many of the alleged abusers may have died.
7 These are some very old cases that would raise questions
8 about what happens in that context.

9 Justice Steinman didn't raise CPLR Section 1601
10 with me, but after talking with him and thinking about it
11 some more, it popped into my head, let's put it that way.
12 And I tried to look at it -- I didn't find any cases -- I
13 actually did look on Westlaw, too. I didn't find any cases
14 where it had been applied, and in sex abuse cases I
15 couldn't. Certainly plenty of cases where 1601 has been
16 applied. But it was because I had that conversation with
17 him yesterday, I really wanted to have this hearing today
18 and at least get on the record that I had that conversation
19 with him.

20 So with that, let me first -- Ms. Ball, do you
21 want to -- has the needle moved at all since our last
22 hearing?

23 MS. BALL: Corinne Ball, Jones Day, for the
24 Diocese of Rockville Centre.

25 Your Honor, there is no more. The Diocese stands

1 on its offer and reminds the Court that 150 million of the
2 200 offer is sourced in loans and contributions from the
3 released parties. We have sold or are borrowing everything.
4 There is no more. We are there. Although as you know and
5 as you recognize, we do not believe dismissal is in the
6 interest of claimants or the Diocese or parishes, the
7 schools, the hospital, and all the others that are served by
8 the Diocese in its charitable/education/religious missions.

9 We have taken Your Honor's call for creativity to
10 heart. Creativity continues, but in the direction of
11 monetizing our very substantial insurance assets. That's
12 where we see the flex. And I think we discussed that last
13 time with Your Honor. But nothing else has changed.

14 Our activities to date are focused on three
15 different categories; those that advance our ability to
16 execute on those loans and perform on the plan, those that
17 advance the Diocese's position in the event of dismissal
18 such as defending Your Honor's orders on appeal, and those
19 that potentially would assist both focusing on settling the
20 adversary proceeding against the cemetery. But nothing
21 else, Your Honor, at this point. Frankly, that's -- all
22 those are directed at hopefully getting us out of here as
23 expeditiously as possible.

24 THE COURT: Well, you may be out of here faster
25 than you wanted to be out of here, but...

1 MS. BALL: I understand that, Your Honor. For
2 what it's worth, the parishes have continually, and I
3 believe in briefs in this Court, taken the position that the
4 allocation of liability does apply. And indeed, they are
5 proffering that as one of their defenses. Not us that --

6 THE COURT: Well, I assume it would be a diocese
7 defense if less than -- if the Diocese is less than 50
8 percent culpable, 1601 applies.

9 MS. BALL: It does.

10 THE COURT: Again, I didn't talk to Justice
11 Steinman about 1601. After some conversation, it was just
12 about how in cases that have been tried around the state,
13 the issues of allocation --

14 MS. BALL: We will have to find out the answer.
15 We do have litigators, as you know, and the parishes have
16 their own litigators who are also defending other cases. So
17 we will make inquiry of them for the benefit of Your Honor.

18 THE COURT: Are any of the coverage cases any
19 closer to settlement? You've been in mediation about that.
20 But are any of them near -- have schedules that would lead
21 to any resolution within the next six months, for example?

22 MS. BALL: As I suggested to Your Honor, the area
23 where creativity, at least on this side, is still a focus is
24 on our substantial insurance assets. We do not believe that
25 the coverage actions will move quickly enough to meet our

1 dwindling resources. But that is not to say that there
2 haven't been some discussions. But that is kind of the only
3 realm remaining to be explored as far as we see it.

4 THE COURT: All right. Thank you.

5 MS. BALL: You're welcome. I wish we had better
6 news.

7 THE COURT: Mr. Stang or Ms. Dine? Sure.

8 MR. STANG: Good afternoon, Your Honor. There has
9 been no change in the bid and ask in terms of monetary
10 demands. The Committee has met and is considering
11 alternatives to dismissal, including what you suggested last
12 time and what you touched upon with Justice Steinman. We
13 are preparing a motion for your consideration that would be
14 that alternative, and there are essential details to it that
15 we are working on that really go to the heart of our ability
16 to make a feasible proposal.

17 We heard Ms. Ball last time about the committee --
18 I'm sorry, the Debtor's position on test cases outside of a
19 plan context. But ultimately that's something that you'll
20 decide when you see our proposal. As to the creativity that
21 the debtor may be working on, we have had no information
22 from the debtor in any recent period of time regarding his
23 efforts to monetize its insurance policies. We did tell the
24 debtor that if it could negotiate its cemetery settlement,
25 notwithstanding our standing to prosecute the fraudulent

1 conveyance action, that we would welcome its efforts to try
2 to reach that settlement without giving up our rights under
3 the standing order. We've not heard anything about that.

4 And as far as defending orders on appeal, since
5 all of the claims, including claims against the parishes,
6 would be channeled under a consensual plan, we from day one
7 of this claims objection process have wondered what the
8 purpose of it was because none of your orders go to the
9 parish claims or claims against the other affiliates. And
10 defending those orders is something they obviously want to
11 do. But at the end of the day -- and I'm just using
12 numbers, Judge -- they're roughly correct, but they're just
13 numbers, if there were 600 claims filed initially and
14 through their claims objection process they've reduced it to
15 500, there will still be 600 claims channeled into the
16 trust. And how those claims are treated in the trust is
17 obviously a different story. But they will be -- all of
18 them will be channeled. So they can spend their time
19 defending appeals, but we don't see and have never seen the
20 utility of this (indiscernible).

21 As far as the insurance coverage actions are
22 concerned, while we are intervenors or intervenors for a
23 limited purpose, we don't disagree with Ms. Ball's
24 assessment of timing. The mediation has included offers and
25 counteroffers with the insurers, but there's been -- I can't

1 report to you that the mediation is resulting in a
2 settlement of any particular insurance liability.

3 THE COURT: So let me just -- again, I don't want
4 to -- I'm not inquiring about what's happened in the
5 mediation. Ms. Ball talked about trying to be creative
6 about ways of monetizing insurance. And I gather one issue
7 that may be currently discussed is a loan against the policy
8 coverage. I don't know what -- Mr. Stang, you've got lots
9 of experience in these sex abuse cases where only
10 occasionally do insurers seem to want to step forward and
11 come to an early resolution. I don't know what creative
12 ways you've thought about engaging -- and this isn't the
13 place to talk about it -- engaging with the Diocese if
14 there's a way of in fact monetizing in the short term, but
15 in a longer period whether it includes some agreements for
16 backstops over a period of years from the Diocese or
17 parishes. And you've undoubtedly had this issue with
18 multiple cases. And if not you, then others representing
19 committees in multiple cases where the insurers have been
20 unwilling to step up. And I understand that they have
21 defenses and they are entitled to stand on their defenses at
22 they want. At some point courts -- have any courts in any
23 of the sex abuse cases actually -- and it may be not a
24 bankruptcy court, it may be a district court if the
25 reference is withdrawn as it has been here. Have any of

1 those cases resolved similar policy defenses that are being
2 asserted in New York?

3 MR. STANG: Well, there have been coverage actions
4 that have progressed towards dispositive motions. Ms. Burns
5 just got an opinion a few days ago regarding expected and
6 intended in one of the Minnesota Diocese cases from -- I
7 don't know if it was the district court or the state court,
8 but it was a coverage action where a motion for summary
9 judgement was denied. And that was an important
10 development.

11 I would say generally in my experience the
12 coverage actions don't historically -- and I give credit to
13 Mr. Burns for the advances that have been made in Minnesota
14 -- have not yielded much in the way of results. The
15 Committee has, after some back and forth with the Debtor,
16 worked with it to provide access to proofs of claim for one
17 or more entities that might be interested in trying to
18 monetize the insurance policies. And so to that extent we
19 have -- again, it took a little back and forth as to the
20 information that was going to be disclosed in the terms, but
21 that's been done.

22 The Debtor has not shared with us any real
23 substantive terms of what a loan or monetization might look
24 like, but they've told us that's because it hasn't developed
25 to that stage yet. We are concerned about what the market

1 might require in terms of premium returns if such a device
2 was utilized, but we'll certainly consider it if the Debtor
3 can present a proposal to us.

4 And one other thing, Judge. While this --

5 THE COURT: I don't know what happened in Camden.
6 I gather that the proposed plan in Camden, the insurers went
7 ballistic about it and it's been altered. Obviously the
8 insured is limited in what action it can take with respect
9 to the insurers without jeopardizing its potential coverage.
10 I have some sense of that. But the first -- look, when I
11 was in practice, maybe it was on -- I used to deal with E&O
12 and D&O policies a lot. And this is the first time I've
13 ever seen policies without aggregate limits. Never.

14 MR. STANG: We're glad the market provided those
15 to the Debtor. We wish the insurers would recognize that
16 they should pay on those policies of course. But I'm not
17 trying to -- that was a little tongue in cheek.

18 THE COURT: No, I understand. And I'm not
19 suggesting -- look, they may well have very good defenses
20 that a court ultimately will sustain. I don't know.

21 MR. STANG: Your Honor, in terms of creativity,
22 your ruling about a week ago denying the motion for stay
23 relief because it was unnecessary in terms of making demands
24 has been something that is being acted upon. I'm not sure
25 if all the letters that could go out have gone out, but it's

1 certainly to be acted upon. And we appreciated the Court's
2 comments enabling individual survivors to do that.

3 And in terms of your comment about historically
4 what insurers have or have not done, there have been about I
5 think 30 what I'll call religious sex-abuse-centered Chapter
6 11 cases, and I would say certainly in the first half, which
7 fortunately my firm was able to be committee counsel in most
8 of those, there were global settlement with (indiscernible).
9 But the world has changed.

10 THE COURT: Yeah, the world has changed. The
11 increasing number of diocese cases being filed all over the
12 country, I'm sure many with the same insurers.

13 MR. STANG: Yes. I think that's part of what has
14 caused the change. But, for example, you mentioned Camden.
15 I'm not counsel in Camden. I only hear in the grapevine
16 what's going on there, and I'm not -- therefore, it's not
17 worth me talking about. Other people on this call are
18 involved in the --

19 THE COURT: I only know what I've read in the
20 blogs and things about Camden, so I haven't talked to
21 anyone.

22 MR. STANG: In Rochester, which has competing
23 plans going on, competing between the debtor and the
24 committee on the one hand and CNA on the other, the court,
25 Judge Warren, has approved scheduling for those matters to

1 go forward, and there is a settlement with two insurance
2 companies, and significant insurance companies, embedded in
3 the plan that the diocese and the committee are jointly
4 proposing. There is no consent or no settlement I should
5 say with CAN. Obviously they have a competing plan. And so
6 it's not that settlements can't be reached, it's just that
7 the idea of naturally these cases were resulting truly
8 global settlements I think is sadly -- in my opinion sadly
9 not in our future.

10 THE COURT: Ms. Ball?

11 MS. BALL: If I may. There are facts, if they
12 would be helpful, that we can assemble and share with both
13 the Committee and yourself, Your Honor. There are 20
14 diocesan cases that have an order of confirmation. That
15 means there are 20 disclosure statements describing exactly
16 what would happen.

17 THE COURT: Yeah. I told you I went to the Penn
18 State -- I haven't read all of them. They're all --

19 MS. BALL: Professor Reilly has listed more
20 because she includes religious orders. She includes San
21 Diego, which was not a Chapter 11, and she includes all the
22 recent cases filed that do not yet have a --

23 THE COURT: I'm sure all of you have read all of
24 that stuff. I only occasionally look at the website.

25 MS. BALL: But in studying, we studied those when

1 we prepared that long-ago disclosure statement. But we've
2 recently gone back and looked again. And from those
3 disclosure statements, you can get settlement totals, you
4 can get insurance portion, not always parish portion, and
5 the per claim. And the reason why we did that again
6 recently is the offer we've made is the highest ever made in
7 those 20 cases when you think about our insurance and the
8 cash. Indeed, our cash alone puts us in the top five. So
9 maybe that's where the 500 claims are relevant when we talk
10 about average per-claim recoveries. But we can pull that
11 together if Your Honor and/or Mr. Stang would find that
12 useful.

13 THE COURT: Well, I don't know that I would. But
14 because -- you know, I don't have a plan in front of me. I
15 don't have a disclosure statement in front of me. You each
16 filed both. Neither side brought on a disclosure statement
17 hearing. I commented at the time I hadn't read them.

18 MS. BALL: You did.

19 THE COURT: And it seemed to me that neither was
20 confirmable, but that -- I wasn't ruling. I mean, if you
21 think -- the landscape has changed against you in the sense
22 that we're all dealing with Purdue.

23 MS. BALL: Well, as Your Honor may be aware, we
24 did just file an amicus on behalf of the U.S. Catholic
25 Conference of Bishops in that case. So yes, we are very

1 much aware of it.

2 THE COURT: And I haven't read anything where
3 anyone suggested that consensual releases don't work, but
4 that does require a consent.

5 MS. BALL: True. And I think we may be testing
6 the limits of how one might obtain consent in the post-
7 Purdue world for sure. I have no doubt.

8 MR. STANG: Your Honor.

9 THE COURT: Go ahead, Mr. Stang.

10 MR. STANG: To the extent -- it's just an
11 observation. San Diego was a Chapter 11 case. It was
12 dismissed upon a settlement that did not include a Chapter
13 11 plan.

14 And I'm going to say something that I hope --
15 well, will reflect how I feel about these cases in general,
16 but especially about this, gee, we're offering more than
17 anyone else has. There is no fair market value for child
18 rape. There just isn't.

19 THE COURT: Yeah. I just read the law journal --
20 I understand it wasn't a Catholic church case, but it was a
21 \$13 million judgement in Westchester County last week.

22 MR. STANG: Yeah. And so I told you the anecdote
23 last time about Judge Adler, that we have a view of the
24 Pacific when this -- I'm sorry, I'm blanking on her name --
25 when counsel for another diocese talked about what was paid

1 in Davenport when we were in front of Judge Adler in San
2 Diego. And she said yes, but we have a view of the Pacific.
3 We have spent an enormous amount of time and effort -- and
4 the dioceses where (indiscernible), they see BRG's bills --
5 in assessing what this enterprise can pay. And Ms. Ball's
6 number in her plan can be the top of the chart for all I
7 care, it doesn't matter. It depends on getting our
8 consents-- because of the way they are approaching these
9 affiliate releases, to getting the consents of the abuse
10 survivor. And right now, notwithstanding what she has said
11 about moths coming out of their pockets, we do not believe
12 that they are putting forth a reasonable settlement offer
13 when we include their ability to continue performing the
14 enterprise's charitable mission.

15 THE COURT: All I can do is ask that before you
16 pull the trigger, either side -- I mean, the Diocese could
17 say just dismiss the case, Judge, or you could make your
18 motion to dismiss. I'm sure you will all continue some
19 discussions and just think about what you think is the best
20 for your respective clients.

21 And I think that you all face this big unknown of
22 what ultimately can be recovered by settlement or judgment
23 against insurers with lots of potential exposure but also
24 defenses. And creative approaches may include some kind of
25 contingent compensation arrangements depending on timing and

1 recovery or lack of recovery. You all share the same
2 interests in recovering from insurance companies. They all
3 right you really hard, obviously. You know that. But
4 everybody in this room or on the screen -- I don't know,
5 maybe insurance counsel is on the screen too. Many of you
6 share the same interest in having a substantial recovery.
7 You'll either get it or you won't. I don't know. It isn't
8 going to be because of me, because those cases aren't before
9 me. And some of it clearly is timing.

10 Mr. Stang, when I denied the Diocese's motion for
11 preliminary injunction and said much -- some of which was
12 picked up by district judges when they remanded the cases
13 back to state court, the survivors have gone too long
14 without recovering. I believe that entirely. And sometimes
15 people can be better off if they get this much now with the
16 expectation of perhaps this much more in the future. And so
17 be creative. It may be -- you can disagree with the Diocese
18 as to whether they've put their best foot forward on the --
19 you know, put their best plan on the table. That's not
20 going to be for me to decide unless you agree.

21 But there are certainly -- is someone who is 60
22 years old going to be better off if they get however much
23 they get today with a respective recovery going forward
24 maybe backstopped by the Dioceses, the parishes up to a
25 point? I don't know. You may have explored that already.

1 I don't know.

2 MR. STANG: Your Honor, our committee consists of
3 -- excluding the young man who was bullied by using racist
4 bullying tactics, our committee consists of abuse survivors
5 who share all of the concerns you've expressed, both
6 personally and on behalf of the greater constituency of
7 which they are really aware of their responsibilities to
8 these folks. And so the demographic, if I can call it that,
9 of the abuse survivors weighs heavily upon the committee
10 when it's deciding what to do.

11 THE COURT: How many cases in a year do you think
12 that Justice Steinman can try?

13 MR. STANG: I don't know. Obviously it would not
14 be limited to him alone. And honestly -- and this gets a
15 little bit to what Ms. Ball used to say about taking cases
16 to verdict. The pattern in settlements throughout the
17 country when there have been settlements outside of the
18 bankruptcy has been not to have to try every single case.

19 THE COURT: That's why (indiscernible) bellwether
20 approach, because that's what's usually applied in mass tort
21 cases.

22 MR. STANG: Well, sometimes it's bellwether in the
23 sense that there has been a disciplined approach to which
24 cases go forward. Sometimes it's just been the cases going
25 forward however the docket allows. But you don't end up

1 trying every case. You end up getting some kind of mass of
2 decisions, some in favor, some against, and the parties
3 think about how that can be extended to the entirety of the
4 docket, if you will.

5 And so the answer is I have no idea. But what we
6 do know is that Judge Steinman -- because I spoke with one
7 plaintiff's counsel yesterday -- that there are some matters
8 that he has started trying -- not in this case, but in some
9 other ones -- that he has set -- this is my understanding
10 and I don't know this from examining the docket myself --
11 that he has set the end of December as the discovery cutoff
12 in many if not all of the cases that were released through
13 the preliminary injunction ruling. And like I said, he can
14 field them out to other judges as well. I don't think they
15 all have to fall on his bench.

16 THE COURT: Well, I think -- let me just interrupt
17 you for this. Number one, it clearly wasn't said in
18 confidence. If there are test cases, make sure you pick
19 ones for Nassau County, because he'll try those.

20 MR. STANG: We got them.

21 THE COURT: He said the other counties, he may
22 handle them until they're ready for trial. Then they go
23 back to the county from which they came. Okay. So he said
24 to me if I pick test cases, I should pick ones that are
25 Nassau County. He'll try them. He'll expedite them. I

1 don't know where that gets you in the end of the day. So I
2 assume -- because this is what's happened in the
3 (indiscernible), you know, when each side sort of picks
4 their bellwether cases, the defendants pick the ones they
5 think they're going to do really well with, and the
6 plaintiffs pick the ones they think they're really going to
7 do well with. And you hope to get enough points on that
8 graph so you can sort of figure out how that array of cases
9 -- some of those bellwether cases settled. But that sort of
10 goes into the mix of how you value them. But that's when I
11 got to thinking about this issue of comparative fall and
12 1601 of the CPLR. You may have great cases against a priest
13 -- they may or may not still be alive -- decent case against
14 a parish, and not very good cases against the diocese unless
15 you really have proof that they had knowledge of the
16 predisposition of a priest who abusees. I could easily
17 foresee that there could be judgements against priests,
18 against parishes or schools and maybe not against a diocese.
19 How that shakes out here, because I'm sure the Diocese
20 doesn't want to leave its parishes.

21 And then I was told I think by both sides,
22 certainly by the debtors, about the high percentage of abuse
23 claims focused on like 38 parishes or something like that.
24 I don't remember if that was the exact --

25 MS. BALL: Roughly that's right, Your Honor. I

1 think it's forty-plus. Three out of four cases.

2 THE COURT: All right. So you can result in
3 wiping out the parishes and leaving the abuse survivors with
4 very little recovery if they can't recover against the
5 Diocese. And then good luck against the insurers which you
6 have now. I'm talking out loud on a lot of this stuff.

7 Look, I've tried to think through -- I've said
8 this before. I don't want to be the first judge to dismiss
9 one of these cases, but that sounds like where this is
10 headed. All I'm asking is all of you try to be as creative
11 as you can. Come up with some solutions. You know? The
12 best settlements are ones that neither side is entirely
13 happy with.

14 MR. STANG: Your Honor, the Committee has -- since
15 you've gotten on the bench this morning, the Committee has
16 not filed a motion to dismiss. As I indicated, we are
17 preparing a motion that provides we think a process that can
18 get us to we hope ultimately a global settlement. There are
19 essential details, including some of the things you've
20 raised this morning that we have considered and need to
21 consider, especially your comments resulting from your
22 conversation with Justice Steinman which we certainly
23 appreciate you putting on the record.

24 THE COURT: He knows that I was having this
25 hearing this afternoon. And I said I would report back to

1 him. And there's nothing hidden in what he and I talked
2 about. I've sort of laid out the gist of what we talked
3 about. And so I'm not holding anything back that he said or
4 I said.

5 MR. STANG: Your Honor, I was thinking you would
6 ask me so when am I going to see this proposal. There is a
7 hearing scheduled for the end of November, and that's
8 certainly a date that we have on our calendars. And we are
9 working to come to something that can be acceptable to our
10 greater constituency because we have stat court counsel who
11 represent committee members who represent a lot of other
12 people. And so our intention is that when we present an
13 idea to you that it has the support obviously of the
14 committee, but also the people who at the end of the day
15 have to garner the votes to get a settlement that would pass
16 at least present Purdue standards.

17 THE COURT: Okay. You all decide you need a
18 hearing earlier, you let me know.

19 MR. STANG: Will do.

20 MS. BALL: Thank you, Your Honor. Just as a
21 reminder --

22 THE COURT: Just identify yourself for the record,
23 Ms. Ball.

24 MS. BALL: Corinne Ball of Jones Day for the
25 Diocese. Just as a reminder, liquidity is an issue. We've

1 got to be out of here one way or another very quickly.

2 Please bear that in mind as you think about your motion.

3 THE COURT: Your liquidity isn't going to be much
4 improved if you're back fighting all these cases in state
5 court, Ms. Ball.

6 MS. BALL: Your Honor, our resources and attention
7 will be devoted to a different direction rather than giving
8 every claimant and plaintiff \$100,000 within 90 days plus
9 the promises of more.

10 MR. STANG: Your Honor, this really isn't the time
11 to solicit the Debtor's plan. I'm sorry, I just...

12 THE COURT: All right. Anybody else have
13 anything? Anyway, Ms. Dine, that's why I wanted to go
14 forward today because I had the conversation with Justice
15 Steinman yesterday and I wanted to get that all on the
16 record today.

17 MS. DINE: Thank you, Your Honor.

18 THE COURT: Otherwise I would have agreed to put
19 it off.

20 All right. We are adjourned.

21 MR. STANG: Thank you, Your Honor.

22 THE COURT: Would you please talk to each other?

23 (Whereupon these proceedings were concluded)
24
25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde".

Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: November 6, 2023

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<p>rise 6:2</p> <p>road 27:21</p> <p>robert 4:13</p> <p>rochester 15:22</p> <p>rockville 1:7 7:24</p> <p>roman 1:7</p> <p>room 20:4</p> <p>roten 3:16</p> <p>roughly 11:12 23:25</p> <p>ruling 14:22 17:20 22:13</p> <p>russell 3:16</p>	<p>seen 11:19 14:13</p> <p>selected 6:11</p> <p>sense 14:10 17:21 21:23</p> <p>served 8:7</p> <p>set 22:9,11</p> <p>settled 23:9</p> <p>settlement 9:19 10:24 11:2 12:2 15:8 16:1 16:4 17:3 18:12 19:12,22 24:18 25:15</p> <p>settlements 16:6,8 21:16 21:17 24:12</p> <p>settling 8:19</p> <p>sex 7:2,14 12:9 12:23 15:5</p> <p>shakes 23:19</p> <p>share 16:12 20:1,6 21:5</p> <p>shared 13:22</p> <p>short 12:14</p> <p>side 9:23 17:16 19:16 23:3 24:12</p> <p>sides 23:21</p> <p>signature 27:6</p> <p>significant 16:2</p> <p>similar 13:1</p> <p>single 21:18</p> <p>six 9:21</p> <p>smith 3:18</p>	<p>sold 8:3</p> <p>solely 6:18</p> <p>solicit 26:11</p> <p>solutions 24:11 27:20</p> <p>sonya 2:25 27:3,8</p> <p>sorry 10:18 18:24 26:11</p> <p>sort 23:3,8,9 25:2</p> <p>sounds 24:9</p> <p>sourced 8:2</p> <p>south 3:13</p> <p>southern 1:2</p> <p>special 4:16</p> <p>specifically 6:24 7:1</p> <p>spend 11:18</p> <p>spent 19:3</p> <p>spoke 6:9 22:6</p> <p>stage 13:25</p> <p>stand 12:21</p> <p>standards 25:16</p> <p>standing 10:25 11:3</p> <p>stands 7:25</p> <p>stang 5:1,6 10:7,8 12:8 13:3 14:14,21 15:13,22 17:11 18:8,9,10,22 20:10 21:2,13 21:22 22:20 24:14 25:5,19 26:10,21</p>	<p>started 22:8</p> <p>stat 25:10</p> <p>state 6:12,14 6:24 9:12 13:7 16:18 20:13 26:4</p> <p>statement 17:1 17:15,16</p> <p>statements 16:15 17:3</p> <p>states 1:1,12</p> <p>status 2:1</p> <p>stay 14:22</p> <p>steinman 6:8 6:10,16,21 7:9 9:11 10:12 21:12 22:6 24:22 26:15</p> <p>step 12:10,20</p> <p>story 11:17</p> <p>street 3:5,13 4:18</p> <p>studied 16:25</p> <p>studying 16:25</p> <p>stuff 16:24 24:6</p> <p>substance 6:16</p> <p>substantial 8:11 9:24 20:6</p> <p>substantive 13:23</p> <p>suggested 9:22 10:11 18:3</p> <p>suggesting 14:19</p> <p>suggestions 6:20</p>
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EXHIBIT D

Karen B. Dine

From: Stephens, Eric P. <epstephens@jonesday.com>
Sent: Monday, August 28, 2023 11:04 PM
To: James Stang; Ball, Corinne
Cc: Rosenblum, Benjamin; Butler, Andrew M.; Karen B. Dine; Brittany M. Michael; Geremia, Todd R.
Subject: RE: Diocese of Rockville Centre

Jim, your email is not correct.

Two of the cases where the Committee sought to lift the PI and that have now been remanded to state court are against non-separately incorporated defendants. Those cases are:

Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021
ARK457 Doe v. Holy Family et al, Index No. 900094/2021

As reflected in the notices of appearance in those cases, Jones Day represents Defendants: The Roman Catholic Diocese of Rockville Centre, New York f/d/b/a St. Pius X Preparatory Seminary and The Roman Catholic Diocese of Rockville Centre, New York f/d/b/a Holy Family Diocesan High School, respectively.

As is reflected in the state court records, we have been appearing before Judge Steinman on behalf of those defendants in those cases. As you probably know, Judge Steinman has been conferencing all of the remanded cases together.

As you should also know from the extensive briefing, factual development, and argument in connection with the preliminary injunction, it is all parties' (and, per a conference held earlier today, Judge Steinman's) expectation that the Diocese will be a significant source of document discovery in nearly all of the remanded cases. It should therefore come as no surprise to anyone that Judge Steinman has asked the Diocese and its counsel to take the lead on document related issues like a standard protective order in the cases where the Diocese is a defendant and those where it is not.

Of course, as we have already previewed with Judge Steinman in writing and during today's conference, in order to protect estate resources in the remanded cases where the Diocese is not a party, we will be seeking to have plaintiffs defray the costs, including reasonable attorneys fees, of any Diocese document productions pursuant to CPLR 3122(d) ("The reasonable production expenses of a non-party witness shall be defrayed by the party seeking discovery.")

Now that you have the facts, I hope that addresses any concern you might have.

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New York, NY 10281
Phone: (212) 326-3916
Fax: (212) 755-7306
epstephens@jonesday.com

From: James Stang <jstang@pszjlaw.com>
Sent: Monday, August 28, 2023 5:29 PM
To: Ball, Corinne <cball@JonesDay.com>
Cc: Rosenblum, Benjamin <brosenblum@JonesDay.com>; Butler, Andrew M. <abutler@jonesday.com>; Karen B. Dine <kdine@pszjlaw.com>; Brittany M. Michael <bmmichael@pszjlaw.com>; Geremia, Todd R. <trgeremia@JonesDay.com>;

Stephens, Eric P. <epstephens@jonesday.com>

Subject: Diocese of Rockville Centre

Corinne,

We understand that Jones Day has been appearing in front of Judge Steinman. Who is Jones Day representing in the state court proceedings in which the Diocese is not a defendant and to whom is Jones Day billing its time?

Jim

Sent from my iPhone

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

EXHIBIT E

Subject: RE: Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021

Date: Thursday, October 12, 2023 at 4:34:51 PM Central Daylight Time

From: Leander James

To: Stephens, Eric P.

CC: Matthew Lombardi, Sandy Kluessendorf, Geremia, Todd R., Chan, Melanie K., Brittany M. Michael, Kenneth Brown

Dear Mr. Stephens,

Thank you for responding to my email. There is a difference of opinion between you and the Creditors' Committee Counsel regarding this case being stayed or not. They disagree with your reading of Judge Glenn's order. They believe the order lifts the stay only for non-debtor entities. It does not lift the stay for debtor entities, such as this defendant. I and my client are thus caught in the middle of your disagreement. I am copying Ms. Michael and Mr. Brown with this email so they can discuss and resolve this issue with you, one way or another. However, I do note that if the bankruptcy is dismissed, which it looks like it is going to be, this issue will be moot.

To be clear, I have no problem with Plaintiff being deposed and moving the case forward, so long as you will coordinate the date with me and my Co-Counsel. You have indicated you will do so, and I thank you for that.

Regarding what you presume I know, you shouldn't. Mr. Noaker was the lead attorney in this case until just recently. I am taking over for him, and there may be history in the case I do not know.

Regarding my client proceeding "at its own risk," we all proceed every day in this work at our own risk.

Respectfully,

Leander L. James, of the firm

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From: Stephens, Eric P. <epstephens@jonesday.com>
Sent: Thursday, October 12, 2023 2:02 PM
To: Leander James <ljames@jvwlaw.net>
Cc: Matthew Lombardi <lombardi@tolmagepeskinlaw.com>; Sandy Kluessendorf <Sandy@jvwlaw.net>;
Geremia, Todd R. <trgeremia@JonesDay.com>; Chan, Melanie K. <melaniechan@jonesday.com>
Subject: RE: Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021

Mr. James, of course we'll work with you on dates for depositions in this and any of our other matters together. As you well know, deposition notices are frequently served with placeholder dates that are revised pursuant to subsequent agreements among parties.

As you also know, the Creditors' Committee in the Diocese's bankruptcy has obtained an order lifting the preliminary injunction in over 220 CVA cases, including the above-referenced matter. That order states "the 228 State Court Actions identified in Exhibit A attached hereto are not stayed or otherwise enjoined and may proceed." The order is explicit that this matter is "not stayed or otherwise enjoined." Accordingly there has been no stay to notify Judge Steinman of as you suggested below or basis to nullify the discovery demands the Diocese has served pursuant to Judge Steinman's orders.

The Diocese will continue to proceed in accordance with the plain language of the orders of the bankruptcy court and the Regional CVA Part for the Ninth and Tenth Judicial District. To the extent your client continues to assert this case is stayed and it need not follow these same orders, it does so at its own risk.

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From: Leander James <ljames@jvwlaw.net>
Sent: Thursday, October 12, 2023 2:33 PM
To: Stephens, Eric P. <epstephens@jonesday.com>
Cc: Matthew Lombardi <lombardi@tolmagepeskinlaw.com>; Sandy Kluessendorf <Sandy@jvwlaw.net>
Subject: Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021

Subject: Anonymous Plaintiff v. St. Pius X Preparatory Seminary, Index No. 200209, 2024

Dear Mr. Stephens,

I am in receipt of your Notice for Deposition.

Please see my two emails below, to which you have not responded. You have taken the position that the Defendant in this matter, St. Pius X Preparatory Seminary, is a d/b/a of the Debtor, Diocese of Rockville Centre, and a non-separately incorporated defendant. As such the automatic stay in bankruptcy applies. Your Notice of Deposition is void ab Initio.

It would be most helpful if you would respond to my emails. Similarly, it would be helpful and professional for you to coordinate deposition dates with Mr. Lumbardi and me in our cases.

Respectfully,

Leander L. James, of the firm

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Copying distribution or the taking of any action in reliance on the contents of this e-mail or attachments is strictly prohibited. If you have received this e-mail in error, please immediately notify us by e-mail or telephone (collect, if necessary) to arrange for disposition of the original.

From: Leander James

Sent: Tuesday, September 5, 2023 2:28 PM

To: epstephens@jonesday.com

Subject: RE: Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021

Dear Mr. Stephens,

I'm following up on my email below. Are you agreeable to drafting the stipulation or notice to the court that the automatic stay applies?

Respectfully,

Leander L. James, of the firm

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you have received this e-mail in error, please immediately notify us by e-mail or telephone (collect, if necessary) to arrange for disposition of the original.

From: Leander James
Sent: Thursday, August 31, 2023 4:07 PM
To: epstephens@jonesday.com
Subject: Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021

Dear Mr. Stephens,

By way of introduction, I am one of the attorneys representing Plaintiff in the above-entitled matter. Heretofore, my co-counsel, Pat Noaker has been the point of contact on this case. Recently I have taken over that role.

It is my understanding that you recently raised the issue that the Defendant in this matter, St. Pius X Preparatory Seminary, is a d/b/a of the Debtor, Diocese of Rockville Centre, and a non-separately incorporated defendant. Assuming my understanding is correct, it would seem the automatic stay precludes this case from going forward at this time, and we should alert Judge Steinman of the same. If you agree, would you be so kind as to draft a stipulation for us to submit to the Court stipulating to the say?

Thank you in advance for your consideration of this request.

Respectfully,

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EXHIBIT F

Pg 258 of 292
JONES DAY

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CDIPOMPEO@JONESDAY.COM

December 1, 2023

BY EMAIL

Kenneth H. Brown
Gail S. Greenwood
Pachulski Stang Ziehl & Jones
One Sansome Street, Ste. 3430
San Francisco, CA 94104

Re: Consensual Preliminary Injunction of Select Cases
In re Roman Catholic Diocese of Rockville Centre, New York

Dear Ken and Gail:

We write regarding various cases inadvertently listed in the Order Denying the Debtor's Motion for a Preliminary Injunction [Adv. Pro. 20-01226 Docket. No. 203] (providing in Exhibit A a list of the CVA Actions no longer subject to the PI) that are being actively litigated in the Regional CVA Part for the Ninth and Tenth Judicial Districts. While Eric Stephens and Jim Stang previously corresponded about a small number of these cases in which Jones Day continues to act as state court litigation counsel, following state court conferences this week, it appears the list is materially larger than previously understood.

There are two types of impacted cases: (i) those implicating Ecclesia insurance policies; and (ii) those in which the defendants include entities that are not separately incorporated from the Diocese of Rockville Centre. As these actions have been set for individual conferences this week in the Regional CVA Part, that Court as well as plaintiff and defense counsel have asked the Diocese to confer with the Committee and report back on how these cases should be treated going forward. Pursuant to that directive, and in light of the Committee's prior expressions of concern on this issue, we seek your agreement that the cases listed below should be restored to the consensual injunction.

In connection with the preliminary injunction motion, the Committee "recognize[d] that prosecution of ... claims that fall within" the insurance policies provided by Ecclesia Assurance Company, "could materially affect limits available to the Diocese," thereby implicating the automatic stay. Committee's Brief in Opp. Dkt. 170 ¶ 31, No. 20-01226-mg (Mar. 17, 2023). So the Committee did "not oppose an injunction of such State Court Actions." *Id.* The Committee also agreed that cases against the Debtor are automatically stayed, and did not seek to lift the stay as to those actions. Similarly, the Diocesan high schools (including St. Pius X Preparatory Seminary), as you know, are / were not separately incorporated but are / were Debtor entities.

We thus seek the Committee's agreement that the following cases remain subject to the consensual injunction and/or automatic stay and should be returned to the list of enjoined cases.

Cases covered by Ecclesia Assurance Company policies:

- Index No. 900261/2021
- Index No. 900235/2021
- Index No. 900160/2021
- Index No. 951159/2021
- Index No. 900369/2021
- Index No. 614400/2021
- Index No. 900398/2021
- Index No. 951160/2021
- Index No. 900146/2021
- Index No. 900041/2021
- Index No. 610849/2021

Cases against high schools that are not separately incorporated from the Diocese:

- Index No. 900307/2021
- Index No. 900363/2021
- Index No. 900403/2021
- Index No. 900095/2021
- Index No. 900099/2021
- Index No. 900094/2021
- Index No. 900144/2021
- Index No. 900269/2021
- Index No. 900289/2021
- Index No. 900344/2021
- Index No. 900147/2021

Notably, five of these cases are stayed on independent grounds: Index No. 900358/2021, due to the death of Plaintiff; and Index Nos. 900144/2021, 900269/2021, 900289/2021, and 900344/2021, due to the Order by the Delaware Court of Chancery in the Arrowood liquidation proceedings.

Please let us know at your earliest convenience if you agree or would like to discuss this.

Sincerely,

/s/ Christopher DiPompeo

Christopher DiPompeo

EXHIBIT G

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU: TRIAL TERM: PART 6

3 -----X
4 ARK 457 DOE,

5 Plaintiff,

Index No.
900094/21

6 -against-

7 HOLY FAMILY a/k/a HOLY FAMILY DIOCESAN
8 HIGH SCHOOL, DOES 1-5 whose Identities
9 Are Unknown to Plaintiff,
10 Defendants.
11 -----X

12 Nassau Supreme Court
13 Mineola, New York 11501
14 November 29, 2023

15 B E F O R E: THE HONORABLE LEONARD D. STEINMAN,
16 Justice of the Supreme Court
17

18 A P P E A R A N C E S:

19 JEFF ANDERSON & ASSOCIATES
20 Attorney for the Plaintiff
21 363 Seventh Avenue, 12th Floor
22 New York, New York 10001

23 BY: PATRICK SMITH STONEKING, ESQ.

24 JONES DAY
25 250 Vesey Street
New York, New York 10281

BY: ERIC P. STEPHENS, ESQ.
TODD R. GEREMIA, ESQ.

JENNIFER SAMPUGNARO, RPR
OFFICIAL COURT REPORTER

JS

Proceedings

1 THE COURT: This is Ark 457 v. Holy Family.

2 Appearances of counsel for the record.

3 MR. STONEKING: Patrick Stoneking, Jeff Anderson
4 & Associates for the plaintiff.

5 MR. GEREMIA: Todd Geremia from Jones Day for
6 defendant.

7 THE COURT: Good morning, Mr. Geremia.

8 MR. STEPHENS: Also Eric Stephens from Jones
9 Day.

10 THE COURT: So with respect to this matter,
11 counsel was telling me that this matter perhaps should not
12 have been sent down to me by Judge Glenn because it's
13 still subject to the automatic stay.

14 Is that plaintiff's position or plaintiff fears
15 that's defendant's position?

16 MR. STONEKING: I think the way your Honor
17 described it is right both ways. That's my position and
18 that's my fear.

19 THE COURT: Do the defendants have a position?

20 MR. GEREMIA: I know they're concerned and we
21 spoke with Mr. Stoneking this morning outside in the
22 corridor that we are going to make a motion to dismiss, it
23 will get denied and then we will say the stay applies. We
24 don't intend to do that.

25 This case is down the road now to getting

Proceedings

1 litigated and it is not subject to the stay any longer,
2 and the Diocese wants to proceed. They named as a
3 defendant Holy Family Diocesan High School not the
4 Diocese.

5 So to address that fear, that will not happen.

6 THE COURT: So in other words, you are not going
7 to assert later on that this matter is subject to the
8 automatic stay?

9 MR. GEREMIA: Correct.

10 MR. STONEKING: Okay.

11 THE COURT: Let's go off the record.

12 (Whereupon, a discussion was held off the
13 record.)

14 THE COURT: Back on the record.

15 So have discovery demands and responses been
16 served in this case?

17 MR. STONEKING: Yes, your Honor.

18 THE COURT: And do you have dates for
19 depositions?

20 MR. STONEKING: We have -- I have dates on me,
21 yes, availability.

22 THE COURT: Have you spoken with counsel about
23 agreeing on dates?

24 MR. STONEKING: No.

25 THE COURT: Is that true with respect to all the

Proceedings

1 matters that you have before me?

2 MR. STONEKING: No, that's not, just the case
3 with Jones Day.

4 THE COURT: Do you have dates with other counsel
5 for depositions?

6 MR. STONEKING: Well, mostly with Mr. Davey
7 we've got a number of different matters and we are
8 coordinating between offices to set them up.

9 THE COURT: You don't have the dates yet?

10 MR. STONEKING: We don't.

11 THE COURT: All these cases you will give me
12 dates by the end of the week.

13 MR. STEPHENS: Your Honor, on the deposition
14 date issued for the Diocese, the likely witnesses here
15 given the age of the case and age of the allegations and
16 the fact that the high school is no longer in existence
17 will be folks like the risk manager, the person who is the
18 head of child protection as well as custodians of record.

19 We heard your Honor's comments this morning that
20 there would be additional third-party subpoenas can be
21 served on the Diocese, and I think as your Honor is aware
22 about 20 third-party subpoenas have been served on the
23 Diocese in the last ten days or so.

24 The witnesses that will be required to
25 authenticate those documents and speak to the risk

Proceedings

1 protocols and the risk management that will be at issue in
2 those cases are the same witnesses that Mr. Stoneking has
3 asked us to coordinate with him on depositions.

4 Rather than have those folks deposed in
5 connection with potentially 60 third-party subpoenas and
6 this action, we would like to discuss coordination as your
7 Honor has encouraged the parties in the other matters in
8 the conferences today.

9 THE COURT: I think that is a good idea, but I
10 am confused about something.

11 With respect to these later subpoenas, are you
12 seeking documents or both?

13 MS. BROSS: We were originally seeking
14 documents. After yesterday's conference I am going to be
15 serving a subpoena for testimony as well, but I don't
16 anticipate taking depositions in every case, only if
17 needed based upon the document production that we get if
18 that makes sense.

19 THE COURT: Yes.

20 So now getting back to this case. You've
21 already served the documents?

22 MR. STEPHENS: Yes, that's correct, your Honor.

23 THE COURT: And would it be the same documents
24 on all the cases or not necessarily?

25 MR. STEPHENS: So, your Honor, there will be,

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1 for example, to the extent that child protection protocols
2 are issued in every case --

3 THE COURT: Let me interrupt.

4 Generally these cases, there are two types of
5 documents, policy and procedure documents, if you will,
6 and personal files.

7 MR. STEPHENS: Correct, that's a good short
8 name.

9 THE COURT: As it relates to policies and
10 procedures, the documents that you served in this case are
11 somewhat the documents that you're likely to serve in
12 response to the subpoenas seeking those type of documents.

13 MR. STEPHENS: Yes, your Honor. In fact prior
14 to the bankruptcy the Diocese had complied with the
15 uniform production of policies and procedures, insurance
16 documents, et cetera. Those are among the documents that
17 we have served in response to Mr. Stoneking.

18 THE COURT: You have one or more policy and
19 procedure witnesses that you would like to produce at one
20 time on all the cases for those plaintiffs who wish to
21 depose somebody concerning policies and procedures?

22 MR. STEPHENS: Yes. And to put it specifically
23 in reference to this case, we have identified two
24 witnesses on issues of notice and child protection, and we
25 anticipate that those witnesses will be called upon on

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1 those topics in every case.

2 And you will recall, your Honor, at a conference
3 that you held in August where we raised this very issue
4 and we talked about ways that we would mitigate this when
5 the issue arose.

6 THE COURT: So if you were to have conversations
7 with some counsel, I don't know if it's practical to have
8 conversations with all counsel, in an attempt to agree
9 upon a date or dates for those policy and procedure
10 witnesses, and then send an email out to all plaintiffs
11 counsel in these cases saying that you intend to produce
12 at this time in all the cases, I support that and I don't
13 know what, if anything, I would be required to sign in the
14 nature of an order with respect to that.

15 I leave it to counsel, but I support the goal.
16 You let me know how I can help you achieve that.

17 MR. STEPHENS: Thank you, your Honor.

18 With respect to time, I've heard your comments
19 about third-party depositions being scheduled for January.
20 I also heard your Honor's comments that subpoenas should
21 be issued by December 13th. I guess my comment there is,
22 December 13th should identify the universal folks that
23 we'll need to coordinate with having received those
24 subpoenas.

25 Is that consistent with what your Honor has in

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1 mind for third-party discovery?

2 THE COURT: Let's go off the record.

3 (Whereupon, a discussion was held off the
4 record.)

5 THE COURT: Back on the record.

6 Deposition dates you're going to get me. You
7 indicated you are going to make a motion to dismiss.

8 MR. GEREMIA: We made a motion to dismiss
9 yesterday evening. We did it, your Honor, by order to
10 show cause because your directive was to do everything by
11 order to show cause.

12 We spoke with Mr. Stoneking outside the court
13 and the parties at least are agreeable to a
14 December 8th opposition date. I'm sorry,
15 December 15th opposition date and December 23rd reply.

16 THE COURT: I was thinking that maybe I should
17 make the motion to dismiss returnable after the trial.
18 That is what I would prefer.

19 Do you really need to make a motion to dismiss
20 as opposed to a summary judgment motion?

21 MR. GEREMIA: I think the issues can and should
22 be dealt with on a motion to dismiss.

23 THE COURT: There's a whole lot of cases that
24 say, and I don't know what the basis of your motion to
25 dismiss is because I haven't seen the papers, but there

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1 are some that relate to notice. That is a difficult
2 motion to dismiss.

3 If it relates to certain causes of action,
4 social services law or duplicative causes of action,
5 that's a different story. Perhaps counsel can agree to
6 trim the complaint if there is causes of action that don't
7 belong there.

8 MR. GEREMIA: We think this lines up pretty
9 precisely with the Second Department, governing Second
10 Department case Fuller versus Family Services of
11 Westchester.

12 In a nutshell, the holding there is when your
13 allegation of notice is the defendant knew or should have
14 known or learned or should have learned that the
15 perpetrator had propensity to engage in sexual assault,
16 that is not enough to withstand a motion to dismiss.

17 THE COURT: That's the only case that you're
18 going to find from the Second Department.

19 MR. GEREMIA: There is another that Mr. Davey
20 did.

21 THE COURT: And he won?

22 MR. GEREMIA: Correct.

23 THE COURT: That's fine. That's a tough motion.
24 Honestly, I know that there is one case because I try and
25 do my best to try to read all the CVA cases that come

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1 down, and I think that's the only case that has come down
2 from the Appellate Division that held that way. And there
3 was like a whole stack of cases that go the other way,
4 but, you know, you made your motion so you've got a return
5 date and I will decide it. It's already made.

6 I mean I would just encourage you with respect
7 to other cases to just wait and make a summary judgment
8 motion. Realistically I am not going to decide the motion
9 probably until after all discovery is done.

10 You might as well wait because summary judgment
11 motion will be a stronger motion if indeed there is no
12 notice. And I wouldn't hesitate to dismiss if there's no
13 notice.

14 So anything else we need to do on Ark 457?

15 MR. STONEKING: There is another matter,
16 protective order. Your Honor brought up, advised the
17 parties to get together and discuss terms of the
18 protective orders.

19 Mr. Stephens sent out the copy of the protective
20 order to Judge Jaeger implemented in 2019. I emailed a
21 response asking for one additional term allowing
22 plaintiff's lawyers to share information about the same
23 perpetrator, it's a term that New York City cases included
24 and they said no. They wanted to bring it up here. I
25 think it's a reasonable term.

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1 Notice is a big issue on these cases. I don't
2 represent everybody and if there is a reason. There are
3 several Bud Ribaud, R-I-B-A-U-D-O, cases. And if
4 information is produced in one case then the other claims
5 should know about it.

6 THE COURT: So you're saying that with respect
7 to you should be allowed to share information with another
8 plaintiff's firm if they have an action against --
9 relating to that same abuser? Is that what you're saying?

10 MR. STONEKING: Yes.

11 THE COURT: And you object to that?

12 MR. GEREMIA: Your Honor, we simply asked
13 Mr. Stoneking to agree to the same protective order that
14 he signed in 2020. After ignoring our request that we
15 made in August for two and-a-half months he is now holding
16 it up to insert provisions to allow him to share
17 information across cases.

18 He's got one case with us with one abuser. The
19 proposal -- this is one case. It's one case, one abuser
20 and I don't believe he's even a repeat abuser.

21 So the provision -- we don't understand what's
22 holding this up. We have asked Mr. Stoneking to simply
23 agree to it.

24 THE COURT: Are you familiar with any other
25 actions against, relating to this abuser?

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1 MR. STEPHENS: No, your Honor. This is a lay
2 teacher.

3 MR. STONEKING: It was my understanding from the
4 conference that the protective order might be applicable
5 to all these cases. I don't know that any protective
6 order has been entered, and I thought the discussion we
7 had in the conference was that he was going to reach out
8 to all counsel to do a protective order that would apply.

9 THE COURT: I think they would like to do that,
10 but my understanding from conferences that we've had is
11 that plaintiff's counsels didn't want to -- right,
12 plaintiff's counsel didn't want to do that.

13 MR. STEPHENS: We have largely not received
14 responses. We did receive a response from Mr. Stoneking
15 so we thought the most straightforward thing to do would
16 be to enter it into the one case we were in.

17 At that time we had not received any third-party
18 subpoenas so we had no other information to protect or
19 that we were worried about. We thought it was going to be
20 straightforward to have Mr. Stoneking agree to what he
21 agreed to in a single case.

22 THE COURT: Well, Mr. Stoneking, if you were to
23 agree to that without prejudice to seeking to be relieved
24 from the order, and not shifting any burden with respect
25 to the implementation of the order.

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1 So, in other words, right now the burden is on
2 the defense I think if they want a protective order
3 concerning the documents they're going to produce.

4 So let's assume that you would agree to
5 confidentiality order without prejudice to you seeking to
6 modify that order, and with respect to such modification
7 the burden remains on the defendant to establish as to why
8 you shouldn't be allowed to share the information. Is
9 that something you could agree to?

10 MR. STONEKING: Yes, absolutely.

11 THE COURT: Is that something you could agree
12 to?

13 MR. GEREMIA: Yes, if we can just simply enter
14 the prior order in this case. Certainly a protective
15 order discussion will be need to be had, but rather than
16 complicate the issue in this one case --

17 THE COURT: Right.

18 So my question is, he signs that order in this
19 case, but it's without prejudice seeking to modify the
20 order. And if he does seek to modify the order, the
21 burden is on you to establish why whatever it is he
22 doesn't want to be confidential anymore should remain
23 confidential.

24 You can't simply rely upon, we have this
25 protective order in place and there is no need to change

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1 it and he hasn't demonstrated why it needs to be changed.

2 MR. STEPHENS: I think, your Honor, if there is
3 going to be a broader discussion about a protective order
4 covering the third-party productions of the Diocese, I do
5 think we will point to the fact that half dozen
6 plaintiff's counsel signed on to this prior order in 2020
7 that's been applicable and in this part for three years.

8 THE COURT: You can make all those arguments,
9 but in terms of where the burden lies, though, it's not
10 going to shift the burden.

11 In other words, if I was in his shoes I would be
12 concerned about signing a confidentiality order that now
13 if I want to get out from under it in all or in part, that
14 now the burden is shifted to me where the burden used to
15 be on you because that's really the prejudice that he may
16 face by signing an order that he might want to modify.

17 MR. GEREMIA: I think to be fair we just want to
18 say, parties reserve rights on all sides.

19 THE COURT: You don't think it's fair to say
20 entering into this order does not shift whatever burden
21 there might be in the law?

22 MR. GEREMIA: I mean let us work with
23 Mr. Stoneking on the language, but I think something
24 generic that makes clear this protective order doesn't
25 prejudice the parties' rights and arguments with respect

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1 to protective orders in other cases. I mean that's a more
2 balanced way to do it, and frankly seems to me that it's
3 sort of saying the burden is going to be back on us.

4 MR. STONEKING: Judge, I believe that the
5 protective order that Judge Jaeger put in place does have
6 the proper burden shifting dynamic. That's not my issue.

7 I was confused because every other plaintiff
8 lawyer was on the chain of emails about the protective
9 order that it obviously extended beyond this case. So my
10 concern was including the other cases where there would be
11 a need to share that information amongst each other.
12 That's the sole issue. If it is just this case --

13 THE COURT: Don't worry about the other
14 plaintiffs counsel, just worry about yourself.

15 MR. STONEKING: If it is just this case I have
16 no problem.

17 MR. GEREMIA: We were asked to send that around
18 to other plaintiff's counsel. Nobody responded except for
19 Mr. Stoneking.

20 MR. STEPHENS: Thank you.

21 THE COURT: Let's go off the record.

22 (Whereupon, a discussion was held off the
23 record.)

24 THE COURT: Back on the record.

25 Is there anything else I should know?

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1 MR. STEPHENS: Just, your Honor, the parties
2 have exchanged deficiency letters. We are working through
3 those.

4 We also have notified Mr. Stoneking that a
5 number of the authorizations that we had received have
6 been rejected so we've asked for revised authorizations
7 based on responses from institutions that rejected the
8 initial authorizations, so we are awaiting those as well.
9 But they're at least -- at least from our perspective
10 there is a substantial issue with respect to the harms
11 alleged in this case, extent to strain relationships,
12 divorce, et cetera, and at least at the moment the
13 plaintiffs have not produced any and refuse to produce
14 family photographs, social media relating to those
15 relationships, et cetera.

16 We don't think that's a sustainable position,
17 but we haven't discussed our discussions with
18 Mr. Stoneking on that.

19 THE COURT: If you think you have exhausted them
20 make the motion. Bring it by order to show cause. Make
21 it sooner rather than later, but the deadline will be
22 December 11th to make any discovery related motions for
23 both sides, but I would hope that you can work it out.

24 MR. GEREMIA: December 15th for the opposition
25 and December 22nd for reply?

Proceedings

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THE COURT: This relates to the motion to
dismiss?

MR. GEREMIA: Correct.

THE COURT: You said that was filed yesterday.

MR. GEREMIA: Correct.

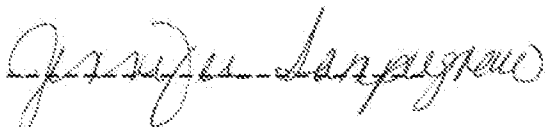
THE COURT: I haven't seen that yet.

Thank you.

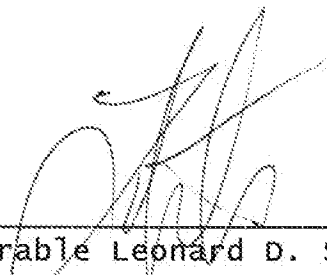
* * *

C E R T I F I C A T E

I, Jennifer Sampugnaro, an official court reporter of
the State of New York, do hereby certify that the foregoing is
a true and accurate transcript of my stenographic notes.



JENNIFER SAMPUGNARO, RPR
SENIOR COURT REPORTER



So ordered: _____, JSC
Honorable Leonard D. Steinman

Dated: 2/6/23 **ENTERED**
Jan 12 2024
NASSAU COUNTY
COUNTY CLERK'S OFFICE

EXHIBIT H



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Gail S. Greenwood

December 13, 2023

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Via E-mail

Christopher DiPompeo
Jones Day
51 Louisiana Ave., N.W.
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cdipompeo@jonesday.com

Re: The Roman Catholic Diocese of Rockville
Centre, New York v. ARK320 DOE, et al.,
Adv. Pro. No. 20-01226 (MG) (Bankr. S.D.N.Y.)

Dear Chris:

In response to your letter received on December 1, the Committee will stipulate to the stay of eleven additional cases that implicate coverage under Ecclesia insurance policies. The Committee does not agree to stay the additional cases that you have identified as naming certain defendant high schools that allegedly are not separately incorporated from the Diocese of Rockville Centre.

With regards to the latter category, state court counsel asked the Diocese months ago to agree that cases against certain high schools that are not separately incorporated should be stayed. The Diocese took the unequivocal position that the *Order Denying the Debtor's Motion for a Preliminary Injunction* [Adv. Docket No. 203] "is explicit" that the cases are "not stayed or otherwise enjoined" and refused to consensually stay any cases identified in the exhibit to the order. The Diocese proceeded to notice depositions. See Exhibit A, email communication between L. James and E. Stephens. The Committee therefore joins the Diocese's position that the Preliminary Injunction Order eliminated any application of a stay to listed cases. There is no justification for staying the cases now that plaintiffs and the state court have invested months in moving those cases forward.



Christopher DiPompeo
December 13, 2023
Page 2

We are available to further discuss as needed.

Very truly yours,

Gail S. Greenwood

Subject: RE: Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021

Date: Thursday, October 12, 2023 at 4:34:51 PM Central Daylight Time

From: Leander James

To: Stephens, Eric P.

CC: Matthew Lombardi, Sandy Kluessendorf, Geremia, Todd R., Chan, Melanie K., Brittany M. Michael, Kenneth Brown

Dear Mr. Stephens,

Thank you for responding to my email. There is a difference of opinion between you and the Creditors' Committee Counsel regarding this case being stayed or not. They disagree with your reading of Judge Glenn's order. They believe the order lifts the stay only for non-debtor entities. It does not lift the stay for debtor entities, such as this defendant. I and my client are thus caught in the middle of your disagreement. I am copying Ms. Michael and Mr. Brown with this email so they can discuss and resolve this issue with you, one way or another. However, I do note that if the bankruptcy is dismissed, which it looks like it is going to be, this issue will be moot.

To be clear, I have no problem with Plaintiff being deposed and moving the case forward, so long as you will coordinate the date with me and my Co-Counsel. You have indicated you will do so, and I thank you for that.

Regarding what you presume I know, you shouldn't. Mr. Noaker was the lead attorney in this case until just recently. I am taking over for him, and there may be history in the case I do not know.

Regarding my client proceeding "at its own risk," we all proceed every day in this work at our own risk.

Respectfully,

Leander L. James, of the firm

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From: Stephens, Eric P. <epstephens@jonesday.com>
Sent: Thursday, October 12, 2023 2:02 PM
To: Leander James <ljames@jvwlaw.net>
Cc: Matthew Lombardi <lombardi@tolmagepeskinlaw.com>; Sandy Kluessendorf <Sandy@jvwlaw.net>;
Geremia, Todd R. <trgeremia@JonesDay.com>; Chan, Melanie K. <melaniechan@jonesday.com>
Subject: RE: Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021

Mr. James, of course we'll work with you on dates for depositions in this and any of our other matters together. As you well know, deposition notices are frequently served with placeholder dates that are revised pursuant to subsequent agreements among parties.

As you also know, the Creditors' Committee in the Diocese's bankruptcy has obtained an order lifting the preliminary injunction in over 220 CVA cases, including the above-referenced matter. That order states "the 228 State Court Actions identified in Exhibit A attached hereto are not stayed or otherwise enjoined and may proceed." The order is explicit that this matter is "not stayed or otherwise enjoined." Accordingly there has been no stay to notify Judge Steinman of as you suggested below or basis to nullify the discovery demands the Diocese has served pursuant to Judge Steinman's orders.

The Diocese will continue to proceed in accordance with the plain language of the orders of the bankruptcy court and the Regional CVA Part for the Ninth and Tenth Judicial District. To the extent your client continues to assert this case is stayed and it need not follow these same orders, it does so at its own risk.

Eric P. Stephens ([bio](#))
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From: Leander James <ljames@jvwlaw.net>
Sent: Thursday, October 12, 2023 2:33 PM
To: Stephens, Eric P. <epstephens@jonesday.com>
Cc: Matthew Lombardi <lombardi@tolmagepeskinlaw.com>; Sandy Kluessendorf <Sandy@jvwlaw.net>
Subject: Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021

Subject: Anonymous Inland Northwest St. Pius X Preparatory Seminary, Inc. v. Diocese of Rockville Centre, Inc., Case No. 20-12345, 2024

Dear Mr. Stephens,

I am in receipt of your Notice for Deposition.

Please see my two emails below, to which you have not responded. You have taken the position that the Defendant in this matter, St. Pius X Preparatory Seminary, is a d/b/a of the Debtor, Diocese of Rockville Centre, and a non-separately incorporated defendant. As such the automatic stay in bankruptcy applies. Your Notice of Deposition is void ab Initio.

It would be most helpful if you would respond to my emails. Similarly, it would be helpful and professional for you to coordinate deposition dates with Mr. Lumbardi and me in our cases.

Respectfully,

Leander L. James, of the firm

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From: Leander James

Sent: Tuesday, September 5, 2023 2:28 PM

To: epstephens@jonesday.com

Subject: RE: Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021

Dear Mr. Stephens,

I'm following up on my email below. Are you agreeable to drafting the stipulation or notice to the court that the automatic stay applies?

Respectfully,

Leander L. James, of the firm

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From: Leander James

Sent: Thursday, August 31, 2023 4:07 PM

To: epstephens@jonesday.com

Subject: Anonymous MWM v. St. Pius X Preparatory Seminary, Index No. 900289/2021

Dear Mr. Stephens,

By way of introduction, I am one of the attorneys representing Plaintiff in the above-entitled matter. Heretofore, my co-counsel, Pat Noaker has been the point of contact on this case. Recently I have taken over that role.

It is my understanding that you recently raised the issue that the Defendant in this matter, St. Pius X Preparatory Seminary, is a d/b/a of the Debtor, Diocese of Rockville Centre, and a non-separately incorporated defendant. Assuming my understanding is correct, it would seem the automatic stay precludes this case from going forward at this time, and we should alert Judge Steinman of the same. If you agree, would you be so kind as to draft a stipulation for us to submit to the Court stipulating to the say?

Thank you in advance for your consideration of this request.

Respectfully,

Leander L. James, of the firm

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EXHIBIT I

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- [NATIONAL NEWS](#)

I. Bishop John Barres makes difficult decision to have Diocese of Rockville Centre file for bankruptcy

By
[Catholic News Service](#)

-

1 October 2020, 15:10
3781



St. Agnes Cathedral in Rockville Centre, N.Y., is seen Aug. 29, 2020. (CNS photo/Gregory A. Shemitz, Long Island Catholic)



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ROCKVILLE CENTRE, N.Y. — Facing over 200 lawsuits alleging sex abuse filed since New York state lifted the statute of limitations on such cases, the Diocese of Rockville Centre Oct. 1 filed “a voluntary petition for reorganization” under Chapter 11 of the U.S. Bankruptcy Code.

The petition was filed in U.S. Bankruptcy Court for the Southern District of New York.

“We believe that this process offers the only way to ensure a fair and equitable outcome for everyone involved, including abuse survivors whose compensation settlements will be resolved by the courts,” said [Bishop John O. Barres](#) said in a statement.



Bishop John O. Barres of Rockville Centre, N.Y., is seen imparting a blessing during Mass at St. Agnes Cathedral in Rockville Centre in 2017. (CNS photo/Gregory A. Shemitz, Long Island Catholic)

"This decision was not made lightly," he said, "but, with the passage of the [Child Victims Act](#), the failure of the diocese's insurers to honor their contractual obligations and the number of suits filed to date, it has become clear the diocese would not be able to continue its spiritual, charitable and educational missions while shouldering the increasingly heavy burden of litigation expenses associated with these cases."

Last year, Gov. Andrew Cuomo signed the Child Victims Act to lift the statute of limitations on filing childhood sex abuse cases that previously had been "time-barred or expired." The new law gave survivors a year to file, but Cuomo has [twice extended the deadline](#) because of difficulties posed by the ongoing pandemic, he said. On May 8, he extended the deadline to Jan. 14, 2021, and on Aug. 3, he extended it further to Aug. 14, 2021.

Regarding the bankruptcy filing, "we know that this will be difficult news for people across the diocese to hear, especially for the many people of Long Island, Catholic and non-Catholic alike, who depend on the church in so many ways," Bishop Barres said in a 10-minute video posted on the diocese's website, www.drvc.org.

The financial burden of litigation expenses "has been severe" and has "only been compounded" by the financial toll of COVID-19 on the diocese, he said.

The bankruptcy will allow the diocese to still carry out its “spiritual, charitable and educational missions,” Bishop Barres said, while at the same time “make sure all clergy sex abuse survivors are afforded just and equitable compensation” and “offer survivors some measure of healing from these horrific abuses.”

The news release, and Bishop Barres in his video message, said the diocese “believes its current and future liquidity will be sufficient to fund operations and ministries during the restructuring process and beyond.”

“Vendors will be paid for all goods and services delivered after the filing, and transactions that occur in the ordinary course of business will continue as before. Employees will be paid their normal wages, and their benefit programs will continue uninterrupted,” the release said.

The diocese said its parishes and Catholic schools are separate legal entities and therefore are not included in the filing. “Operations of the parishes and schools are expected to continue as normal,” it said.

Some parishes are named in Child Victims Act lawsuits along with the diocese, and Bishop Barres said the diocese “intends to petition the Bankruptcy Court to stay any separate civil actions against these parishes and bring these cases under the umbrella of the settlement process in the diocese’s Chapter 11 case.”

“We carefully and prayerfully considered other alternatives, but Chapter 11 was the only way to provide fair settlements to survivors while continuing to be of service to the 1.4 million Catholics in the geographical boundaries of the Diocese of Rockville Centre,” Bishop Barres said in his message.

The diocese began implementing cost reductions and streamlining its operations in October 2019, a move expected to save the diocese about \$3.5 million annually.

“Like many other institutions, the diocese has suffered a strain on its finances as a result of the COVID-19 pandemic. Approximately 40% of its annual revenue comes from offertory collections, which have dropped precipitously (along) with attendance at Sunday Mass,” the news release said.

This past August, the diocese cut its budget and reduced staff by 10% at the pastoral center in Rockville Centre, cuts it said will save about \$5 million annually.

"We will work diligently with all survivors, creditors and ministries to maintain open communication while we work toward our goal of completing a settlement and finalizing a restructuring plan that includes a comprehensive and final resolution for suffering survivors," the diocese said.

The diocese created the Office for the Protection of Children and Young People in 2003 to oversee implementation and compliance with the U.S. bishops' "Charter for the Protection of Children and Young People and the Essential Norms" first approved in June 2002.

The office also ensures the protection and safety of children by enforcing protocols for reporting and investigating alleged incidents of abuse.

In 2017, the diocese launched its Independent Reconciliation and Compensation Program to provide abuse survivors "a confidential avenue for being heard" and provide "some measure of reconciliation and compensation based on an independent review by nationally recognized fund administrators."

The program ended with the Chapter 11 filing, the diocese said, but since it was instituted, it had provided varying amounts of compensation to about 350 survivors totaling more than \$62 million.

"Participation in the IRCP had been completely voluntary," the diocese said.